

BRB No. 07-0917 BLA

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| E.K |) | |
| (Widow of E.K.) |) | |
| |) | |
| Claimant-Respondent |) | |
| |) | |
| v. |) | |
| |) | |
| BARNES AND TUCKER COMPANY |) | |
| |) | DATE ISSUED: 09/25/2008 |
| Employer-Petitioner |) | |
| |) | |
| DIRECTOR, OFFICE OF WORKERS' |) | |
| COMPENSATION PROGRAMS, UNITED |) | |
| STATES DEPARTMENT OF LABOR |) | |
| |) | |
| Party-in-Interest |) | DECISION and ORDER |

Appeal of the Decision and Order Awarding Survivor's Benefits and the Order Denying Employer's Motion for Reconsideration of Janice K. Bullard, Administrative Law Judge, United States Department of Labor.

Ralph J. Trofino, Johnstown, Pennsylvania, for claimant.

John J. Bagnato (Spence, Custer, Saylor, Wolfe & Rose, L.L.C.), Johnstown, Pennsylvania, for employer.

Helen H. Cox (Gregory F. Jacob, Solicitor of Labor; Rae Ellen Frank James, Acting 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: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Survivor's Benefits and the Order Denying Employer's Motion for Reconsideration (2006-BLA-05498) of

Administrative Law Judge Janice K. Bullard rendered on a survivor's claim¹ 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 accepted the parties' stipulation that the miner had pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203.² Thus, the administrative law judge considered the sole issue to be whether the evidence was sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Decision and Order at 2. In her summary of the medical evidence relevant to 20 C.F.R. §718.205(c), the administrative law judge ruled that the autopsy reports of Drs. Perper, Bush and Oesterling were inadmissible, as to the issue of the cause of the miner's death because, in addition to performing a microscopic review of the miner's autopsy slides, these physicians had considered clinical evidence in rendering their opinions. In weighing the evidence which she considered to be admissible evidence on the cause of the miner's death, the administrative law judge gave controlling weight to the opinion of the miner's treating physician, Dr. Lieb, and to the opinion of the autopsy prosector, Dr. Goldblatt, that the miner's death was hastened by clinical and legal pneumoconiosis, over the contrary opinions of Drs. Fino and Hurwitz, that the miner's death was unrelated to pneumoconiosis. Accordingly, the administrative law judge awarded benefits. By Order dated July 25, 2007, the administrative law judge denied employer's motion for reconsideration.

On appeal, employer contends that the administrative law judge erred in excluding the opinions of Drs. Bush and Oesterling, as to the cause of the miner's death, on the ground that they considered more than just a microscopic review of the autopsy slides in preparing their autopsy reports pursuant to 20 C.F.R. §725.414. Employer asserts that it was proper for Drs. Bush and Oesterling to review other objective evidence, besides the autopsy slides, in the preparation of their reports, because "the legitimacy of [an] opinion on cause of death is as dependent on the clinical picture as it is upon the pathology review." Employer's Memorandum in Support of Petition for Review at 5. Employer also contends that the administrative law judge erred in relying on the opinions of Drs. Lieb and Goldblatt to find that pneumoconiosis hastened the miner's death pursuant to 20 C.F.R. §718.205(c). Employer asks the Board to vacate the administrative law judge's award of benefits and remand the case for consideration of the opinions of Drs. Bush and Oesterling as to whether pneumoconiosis hastened the miner's death.

¹ Claimant, E.K., is the widow of the miner, E.K., who died on March 26, 2004. Director's Exhibit 16. Claimant filed her survivor's claim on May 5, 2005. Director's Exhibit 2.

² At the hearing, employer conceded that the existence of pneumoconiosis arising out of coal mine employment was established. Hearing Transcript at 13.

Claimant responds to employer's appeal, urging the Board to affirm the administrative law judge's evidentiary rulings and her award of benefits.³ The Director, Office of Workers' Compensation Programs (the Director), has also filed a response, asserting that the administrative law judge properly applied the regulation at 20 C.F.R. §725.414 to exclude certain portions of the opinions of Drs. Bush and Oesterling that constitute medical reports, as opposed to autopsy reports. The Director, however, takes no position as to the merits of claimant's entitlement to 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.⁴ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Evidentiary Issues

Initially, we address employer's assertion that the administrative law judge erred in applying the evidentiary limitations at 20 C.F.R. §725.414.⁵ The relevant submissions

³ Claimant asserts that if the Board agrees with employer that in preparing an autopsy report, a pathologist may review all of the relevant evidence of record, not just the autopsy slides or the original autopsy report, the Board should direct the administrative law judge to admit on remand, both Dr. Perper's opinion and Dr. Bush's opinion as to the cause of the miner's death. Claimant's Brief (unpaginated). Claimant, however, maintains that Dr. Oesterling's rebuttal autopsy report constitutes excessive evidence since claimant did not submit an autopsy rebuttal report. *Id.*

⁴ This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit as the miner's coal mine employment was in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 3.

⁵ The regulations contained in 20 C.F.R. §725.414, in conjunction with 20 C.F.R. §725.456(b)(1), set limits on the amount of specific types of medical evidence that the parties can submit into the record. 20 C.F.R. §§725.414; 725.456(b)(1). In support of their affirmative cases, claimant and employer may each submit two x-ray interpretations, the results of two pulmonary function and arterial blood gas studies, one report of autopsy and two medical reports. 20 C.F.R. §725.414(a)(2)(i), (a)(3)(i). In rebuttal of the case presented by the opposing party, claimant and employer may each submit no more than one physician's interpretation of each chest x-ray, pulmonary function study, arterial blood gas study, autopsy or biopsy submitted by the opposing party and by the Director pursuant to 20 C.F.R. §725.406. 20 C.F.R. §725.414(a)(2)(ii), (a)(3)(ii). In addition, where rebuttal evidence has been submitted, claimant and employer may obtain

of the parties is as follows. Claimant submitted in support of her affirmative case, the original report of the autopsy performed by Dr. Goldblatt on March 27, 2004. Director's Exhibit 17. She also submitted an affirmative medical report by Dr. Goldblatt dated September 7, 2006; and the deposition transcript of Dr. Lieb dated August 8, 2006.⁶ Claimant's Exhibits 3, 5. In rebuttal, claimant submitted an autopsy report by Dr. Perper dated August 20, 2006. Claimant's Exhibit 1. Employer submitted in support of its affirmative case, an autopsy report by Dr. Bush dated September 19, 2005, the deposition transcript of Dr. Bush dated June 12, 2006, and a supplemental report by Dr. Bush dated September 27, 2006. Director's Exhibit 26; Employer's Exhibits 3, 8. Employer submitted an affirmative medical report by Dr. Hurwitz dated December 4, 2005, along with Dr. Hurwitz's deposition transcript dated June 29, 2006, and a supplemental report by Dr. Hurwitz dated September 24, 2006. Employer's Exhibits 1, 4, 6. Employer also submitted an affirmative medical report by Dr. Fino dated August 18, 2006, along with Dr. Fino's deposition transcript dated September 26, 2006. Employer's Exhibits 2, 5. In rebuttal, employer submitted an autopsy report by Dr. Oesterling dated September 20, 2006. Employer's Exhibit 7. The miner's death certificate and his hospitalization and treatment records were also admitted into the record. Director's Exhibits, 16, 18-25.

In her Decision and Order Awarding Survivor's Benefits, the administrative law judge reviewed the parties' evidence to ascertain whether each physician's opinion was submitted in accordance with the evidentiary limitations. The administrative law judge noted that, in preparation of their respective autopsy reports, Drs. Bush and Oesterling "reviewed an extensive array of medical evidence aside from [their microscopic review of] the autopsy slides."⁷ Decision and Order at 9. Citing *Keener v. Peerless Eagle Coal*

an additional statement from the physician who originally interpreted the chest x-ray, performed the objective testing, or prepared a medical report, which explains his or her conclusions in light of the rebuttal evidence. *Id.* Medical evidence that exceeds the limitations of 20 C.F.R. §725.414 "shall not be admitted into the hearing record in the absence of good cause." 20 C.F.R. §725.456(b)(1); see *Brasher v. Pleasant View Mining Co.*, 23 BLR 1-141 (2006).

⁶ Dr. Lieb, who signed the death certificate, is the miner's treating physician. Director's Exhibit 16; Claimant's Exhibit 5. Dr. Lieb did not prepare a medical report for purposes of the evidentiary limitations at 20 C.F.R. §725.414.

⁷ Attached to the case file are the records from two previously denied claims filed by the miner prior to his death. However, none of the medical evidence developed in conjunction with the miner's claims was designated by the parties as evidence in the survivor's claim in accordance with the evidentiary limitations. However, in preparing his autopsy report, Dr. Bush reviewed eight reports of pulmonary evaluations obtained in

Corp., 23 BLR 1-229 (2007)(*en banc*), the administrative law judge concluded that the opinions of Drs. Bush and Oesterling qualified as both a report of an autopsy and a medical report for the purposes of the evidentiary limitations. *Id.* Because employer had already submitted its complement of affirmative medical reports, the administrative law judge concluded that the opinions of Drs. Bush and Oesterling were submitted in excess of the regulations. *Id.* However, the administrative law judge indicated that she would admit the “purely objective findings on autopsy” by Drs. Bush and Oesterling, and “allow other physicians of record to rely upon them.” *Id.* In all other respects, however, she found that it was “proper to exclude the opinions expressed [by Drs. Bush and Oesterling] concerning the cause of death as exceeding the evidentiary limitations.” *Id.* In addition, the administrative law judge found that Dr. Bush’s deposition testimony was inadmissible pursuant to 20 C.F.R. §725.414(c).⁸ *Id.*

Employer acknowledges on appeal that the administrative law judge’s exclusion of portions of the opinions of Drs. Bush and Oesterling is in accordance with the Director’s interpretation of 20 C.F.R. §725.414, as stated in *Keener*, that a report of a pathologist who prepares a written assessment of the miner’s respiratory or pulmonary condition based on a review of both pathological and clinical evidence, may be seen to have prepared both a report of autopsy (or autopsy rebuttal report) and a medical report, for purposes of the evidentiary limitations. *Keener*, 23 BLR at 1-230. Employer, however, argues that because “the goal on litigation of the issues in this case, the evidentiary limitations notwithstanding, is truth seeking . . . to suggest that a pathologist cannot give an opinion regarding the cause of the death if [he or she] looks to the clinical record is contrary to both logic and the practice of medicine.” Employer’s Memorandum at 5.

conjunction with the miner’s claims. Dr. Bush also reviewed thirty-six autopsy slides, treatment records by Drs. Lieb and Cardellino, and all of the miner’s hospitalization records dating from 1986-2004. Director’s Exhibit 26. Dr. Perper reviewed the autopsy slides, all of the miner’s hospitalization records from 1986-2004, treatment records by Drs. Lieb and Cardellino, the medical report of Dr. Bush, and the medical report and deposition testimony of Dr. Hurwitz. Claimant’s Exhibit 1. Dr. Oesterling reviewed the autopsy slides, and the reports of Drs. Fino and Perper, which outlined all of the available medical evidence of record in the survivor’s claim. Employer’s Exhibit 7.

⁸ We affirm the administrative law judge’s decision to exclude Dr. Bush’s deposition testimony pursuant to 20 C.F.R. §725.414(c) as that particular evidentiary ruling is not challenged by employer on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The Director, however, urges the Board to reject employer's argument and specifically points out that the evidentiary limitations do not necessarily preclude a party from submitting a "global" opinion (based on the doctor's review of clinical and autopsy evidence) as to the cause of a miner's death. Director's Letter Brief at 3. Rather, a pathologist's "global review would be considered a medical report," subject to the evidentiary limitations, and "admissible only in compliance with the two-report limit, absent a showing of good cause." *Id.* The Director further explains that employer has not been unduly prejudiced by the administrative law judge's ruling:

Given that the record contained four medical reports from the employer and no assertion [by employer] of good cause to exceed the two-report limit, the [administrative law judge] properly limited the two pathologists' reports to the portions of their reports that analyzed the clinical data from the autopsy and thus could be characterized as a report of an autopsy or rebuttal of a report of an autopsy.

Director's Letter Brief at 3. We agree with the Director that the administrative law judge acted properly in excluding the opinions of Drs. Bush and Oesterling on the issue of the cause of the miner's death.

Since the Director is charged with the administration of the Act, special deference is generally given to the Director's reasonable interpretation of a regulation. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843, 845 (1984); *Freeman United Coal Mining Co. v. Director, OWCP [Taskey]*, 94 F.3d 384, 387, 20 BLR 2-348, 2-355 (7th Cir. 1996); *Cadle v. Director, OWCP*, 19 BLR 1-55, 1-62 (1994). Since Dr. Bush and Dr. Oesterling prepared a microscopic review of the autopsy tissue slides, and also reviewed additional medical evidence, including the miner's treatment records and objective test results, we agree with the Director that Dr. Bush's opinion constitutes both an autopsy report and a medical report subject to the evidentiary limitations, while Dr. Oesterling's opinion constitutes both an autopsy rebuttal report and a medical report for the purposes of 20 C.F.R. §725.414. *See Keener* at 1-239. Because the administrative law judge properly found that employer had already submitted two medical reports, by Drs. Fino and Hurwitz, in support of its affirmative case, we conclude that the administrative law judge acted properly in finding that employer was not entitled to also submit the medical reports by Drs. Bush and Oesterling in excess of the evidentiary limitations. Furthermore, because the administrative law judge was unable to discern what evidence, clinical or pathological, formed the basis for their opinions as to the cause of the miner's death, we affirm the administrative law judge's decision to limit her consideration of the opinions of Drs. Bush and Oesterling to those portions of their reports that analyzed the clinical data from the autopsy, and to exclude their opinions

relevant to whether pneumoconiosis hastened the miner's death.⁹ 20 C.F.R. §725.414(a)(3)(i); *see Keener*, 23 BLR at 1-241; *Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-108 (2006)(*en banc*)(McGranery & Hall, JJ., concurring and dissenting), *aff'd on recon.*, 24 BLR 1-13 (2007)(*en banc*)(McGranery & Hall, JJ., concurring and dissenting). Consequently, we affirm the administrative law judge's evidentiary rulings and reject employer's assertions of error under 20 C.F.R. §725.414.¹⁰ 20 C.F.R. §725.456(b)(1); *Brasher v. Pleasant View Mining Co.*, 23 BLR 1-141, 1-145 (2006); *see Dempsey v. Sewell Coal Co.*, 23 BLR 1-47 (2004)(*en banc*) (recognizing that an administrative law judge has broad discretion in handling procedural matters), *vac'd and remanded on other grounds, Sewell Coal Co. v. Director, OWCP [Dempsey]*, 523 F.3d 257, 24 BLR 2-128 (4th Cir. 2008); Decision and Order at 8-11.

Merits of Entitlement

Employer further contends that the administrative law judge erred in finding that the miner's death was hastened by pneumoconiosis. To establish entitlement to survivor's benefits pursuant to 20 C.F.R. Par 718, 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. §718.205(a)(1)-(3); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). For survivor's claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or that death was caused by complications of pneumoconiosis. 20 C.F.R. §718.205(c)(2), (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); *Lango v. Director, OWCP*, 104 F.3d 573, 576, 21 BLR 2-12, 2-18

⁹ When a medical report is based, in whole or in part, on inadmissible evidence, the administrative law judge may, in his discretion, exclude that report, redact the objectionable content, ask the physician to submit a new report, or factor in the physician's reliance upon the inadmissible evidence when deciding the weight to which his opinion is entitled. *Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-241 (2007)(*en banc*).

¹⁰ The Director, Office of Workers' Compensation Programs, correctly notes that employer did not request to substitute either the report of Dr. Bush or of Dr. Oesterling for one of its affirmative medical reports, nor did employer assert good cause for exceeding the evidentiary limitations. Director's Brief at 3.

(3d Cir. 1997); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 1006, 13 BLR 2-100, 2-108 (3d Cir. 1989).

In this case, the miner's death certificate was signed by his treating physician, Dr. Lieb, who listed coronary artery disease, congestive heart failure, chronic obstructive pulmonary disease (COPD) and cardiomyopathy as the immediate causes of the miner's death. Director's Exhibit 16. Dr. Lieb testified that while the direct cause of the miner's death was coronary artery disease, the miner's respiratory disease, in the form of clinical and legal pneumoconiosis (COPD due in part, to coal dust exposure) caused hypoxemia, which worsened the miner's ischemia and hastened his death. Claimant's Exhibit 5.

The miner's autopsy was conducted by Dr. Goldblatt on March 27, 2004. Director's Exhibit 17. Dr. Goldblatt opined that the miner died from "acute thrombotic occlusion of the coronary bypass graft" associated with respiratory failure and subsequent myocardial ischemia. *Id.* The contributing causes of death were listed as simple coal workers' pneumoconiosis, pulmonary emphysema, acute bronchopneumonia and cor pulmonale. *Id.* In a supplemental report, Dr. Goldblatt stated that chronic lung disease can produce myocardial ischemia by reducing the oxygen flow to the heart muscle and by increasing the heart muscle mass (cor pulmonale). Claimant's Exhibit 3. He concluded that the miner's death was hastened by pneumoconiosis as "the combined effect of chronic lung disease (*e.g.* COPD) with cor pulmonale, acute bronchopneumonia, and severe coronary artery disease produced respiratory failure resulting in cardiac ischemia and subsequent cardiac failure." *Id.*

Dr. Hurwitz reviewed the medical record, and opined that the miner died as a result of a myocardial infarction, which was caused by underlying coronary artery disease and precipitated by the stress of bronchopneumonia. Employer's Exhibit 1. After reviewing the autopsy report and Dr. Goldblatt's supplemental opinion, Dr. Hurwitz alleged that Dr. Goldblatt misdiagnosed cor pulmonale on autopsy because he failed to recognize that the miner had both right and left ventricle hypertrophy, a condition which Dr. Hurwitz attributed solely to the miner's cardiac disease. *Id.* Dr. Hurwitz testified that the miner's underlying pulmonary disease did not exacerbate the progression of his heart disease, and did not contribute to the miner's death. Employer's Exhibit 4. Similarly, Dr. Fino reviewed the medical record and opined that the miner died solely as the result of his coronary artery disease. Employer's Exhibit 2. Dr. Fino specifically opined that there was no causal nexus between the miner's death and his exposure to coal dust. Employer's Exhibit 5.

In considering the merits of the survivor's claim, the administrative law judge initially found that the miner suffered from "both clinical pneumoconiosis (*i.e.* micronodular simple coal workers' pneumoconiosis) and legal pneumoconiosis (*i.e.* pulmonary emphysema attributable to coal dust exposure)." Decision and Order at 10.

She further found that “[t]here is no evidence of record to support that the [m]iner’s pneumoconiosis was the direct cause of his death, nor does the pathological evidence of record support a finding of complicated pneumoconiosis.” *Id.* Consequently, the administrative law judge concluded that “the ultimate issue of entitlement turns on whether the [m]iner’s pneumoconiosis was ‘a substantially contributing cause or factor’ leading to the [m]iner’s death.” *Id.*, quoting 20 C.F.R. §718.205(c).

In weighing the conflicting opinions on the issue of whether the miner’s death was hastened by pneumoconiosis, the administrative law judge assigned controlling weight to the opinions of Drs. Goldblatt and Lieb, that the miner’s coal dust related “COPD with cor pulmonale combined with other factors [and] eventually caused the cardiac failure” which resulted in the miner’s death. Decision and Order at 11. The administrative law judge specifically rejected the opinions of Drs. Fino and Hurwitz, that the miner’s death had no relation to his respiratory disease. In so doing, the administrative law judge noted that Drs. Fino and Hurwitz “relied heavily upon the [pathological] findings of Drs. Bush and Oesterling, whose opinions I accord limited weight, when compared with the opinion of the prosector.” Decision and Order at 10. The administrative law judge specifically credited Dr. Goldblatt’s diagnosis of cor pulmonale, over Dr. Hurwitz’s contrary finding, and thereby gave less weight to Dr. Hurwitz’s opinion that the miner’s death was not hastened by either his legal or clinical pneumoconiosis. *Id.* Similarly, the administrative law judge found Dr. Fino’s opinion, that pneumoconiosis played no role in the miner’s death, to be flawed as Dr. Fino appeared “reluctant to accept that the miner had pneumoconiosis or COPD and pulmonary emphysema, all conditions which are fully supported by the preponderance of the medical evidence.” *Id.* Thus, relying on the reasoned and documented opinions of Drs. Goldblatt and Lieb, the administrative law judge found that claimant satisfied her burden of proof under 20 C.F.R. §718.205(c) to establish that the miner’s death was hastened by pneumoconiosis.

Employer argues on appeal that the administrative law judge erred in crediting the opinions of Drs. Lieb and Goldblatt, that the miner’s respiratory condition exacerbated his cardiac condition, and thereby hastened his death. Employer specifically alleges that there is no objective evidence obtained during the miner’s lifetime from which to conclude that the miner had significant COPD or that he suffered from hypoxemia as stated by Drs. Lieb and Goldblatt. Employer’s Brief at 6-7. We disagree.

The administrative law judge correctly determined that the miner was regularly treated, from May 2000 until his death, by Dr. Lieb for exacerbations of COPD, which required multiple hospitalizations. Decision and Order at 10. The administrative law judge permissibly found, based on her consideration of the factors set forth at 20 C.F.R. §718.104(d), that Dr. Lieb’s diagnosis of significant COPD with hypoxemia, and his opinion, that the miner’s clinical and legal pneumoconiosis hastened the miner’s death, were reasoned and documented. *Id.* We, therefore, conclude that the administrative law

judge acted within her discretion in according Dr. Lieb's opinion determinative weight at 20 C.F.R. §718.205(c). *Soubik v. Director, OWCP*, 366 F.3d 226, 23 BLR 2-82 (3d Cir. 2004); *Mancia v. Director, OWCP*, 130 F.3d 579, 21 BLR 2-215 (3d Cir. 1997); *Lango*, 104 F.3d at 576; 21 BLR at 2-18; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*).

Furthermore, the administrative law judge correctly recognized that, "of significant importance in this case is Dr. Goldblatt's diagnosis on autopsy of cor pulmonale," which supports a conclusion that the miner had significant respiratory disease at the time of death, contrary to the conclusions of Drs. Fino and Hurwitz. Decision and Order at 11. As noted by the administrative law judge, of the four pathologists of record, Drs. Perper and Goldberg agreed that the miner had cor pulmonale, while Dr. Oesterling "loosely supported that diagnosis by reporting findings of pulmonary hypertension."¹¹ *Id.* We affirm the administrative law judge's finding, based on a preponderance of the pathologists' opinions,¹² that the miner suffered from cor pulmonale. See *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986); Decision and Order at 11. Because the administrative law judge permissibly found that the miner suffered from cor pulmonale, we affirm her finding that Dr. Goldblatt's opinion, as to the cause of the miner's death, was reasoned and deserving of controlling weight at 20 C.F.R. §718.205(c). See *Balsavage v. Director, OWCP*, 295 F.3d 390, 22 BLR 2-386 (3d Cir. 2002); *Lango*, 104 F.3d at 576; 21 BLR at 2-18; *Clark*, 12 BLR at 1-151; Decision and Order at 11. We therefore affirm the administrative law judge's finding, based on Dr. Goldblatt's opinion, that the miner's death was hastened by pneumoconiosis. Decision and Order at 11.

Although employer disagrees with the administrative law judge's credibility findings in this case, employer's arguments amount to little more than a request that the Board reweigh the evidence, which we are not empowered to do. See *Kertesz v. Crescent*

¹¹ The administrative law judge properly acknowledged that Dr. Goldblatt's diagnosis of cor pulmonale was not necessarily inconsistent with the findings of Drs. Fino and Oesterling, as Dr. Fino testified that pulmonary hypertension "can act as a precursor to cor pulmonale," Decision and Order at 8, and both doctors agreed that the miner suffered from pulmonary hypertension. Decision and Order at 11; Employer's Exhibits 5, 7.

¹² We affirm the administrative law judge's decision to reject the opinion of Dr. Hurwitz that the miner did not have cor pulmonale, as the administrative law judge correctly noted that Dr. Hurwitz conceded during his deposition that he "did not review any of the microscopic slides or other 'hard evidence' in this case." Decision and Order at 7, quoting Employer's Exhibit 4 at 33.

Hills Coal Co., 788 F.2d 158, 163, 9 BLR 2-1, 2-8 (3d Cir. 1986); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Because the administrative law judge properly weighed all of the admissible evidence, and explained the bases for her credibility determinations in finding that the miner's death was hastened by pneumoconiosis, we affirm the administrative law judge's finding that claimant has satisfied her burden of proof under 20 C.F.R. §718.205(c). See *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *Clark*, 12 BLR at 151. Thus, we affirm the administrative law judge's award of benefits.

Accordingly, the administrative law judge's Decision and Order Awarding Survivor's Benefits and Order Denying Employer's Motion for Reconsideration are affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge