

BRB No. 13-0057 BLA

JAMES MARSHALL	)	
	)	
Claimant-Respondent	)	
v.	)	
	)	
EASTERN ASSOCIATED COAL	)	
CORPORATION	)	DATE ISSUED: 11/15/2013
	)	
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 Living Miner's Benefits of William S. Colwell, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe (Wolfe, Williams, Rutherford & Williams), Norton, Virginia, for claimant.

Laura Metcoff Klaus (Greenberg Traurig, LLP), Washington, D.C., for employer.

Helen H. Cox (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: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Living Miner's Benefits (09-BLA-5872) of Administrative Law Judge William S. Colwell rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-

944 (Supp. 2011) (the Act). This case involves a miner's subsequent claim<sup>1</sup> filed on October 20, 2004.<sup>2</sup> Director's Exhibit 3.

Initially, in a Decision and Order issued on December 28, 2007, the administrative law judge credited claimant with twenty-one years of coal mine employment,<sup>3</sup> and found that the medical evidence developed since the denial of claimant's previous claim established that claimant is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2), thereby demonstrating a change in the applicable condition of entitlement under 20 C.F.R. §725.309(d). Director's Exhibit 57 at 6, 19. Considering the merits of the claim, the administrative law judge found that the medical evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Director's Exhibit 57 at 28-29. Accordingly, the administrative law judge denied benefits.

Claimant timely requested modification pursuant to 20 C.F.R. §725.310. Director's Exhibit 58. The claim was referred to the Office of Administrative Law Judges and a hearing was held before the administrative law judge on March 30, 2011. Director's Exhibits 63, 64.

In a Decision and Order issued on September 25, 2012, which is the subject of this appeal, the administrative law judge credited claimant with 20.5 years of coal mine employment, pursuant to the parties' stipulation, and found that claimant smoked one pack of cigarettes per day for thirty-four years. Decision and Order at 3, 5-8. The administrative law judge found that the x-ray, biopsy, CT-scan, and medical opinion evidence did not establish the existence of clinical pneumoconiosis<sup>4</sup> pursuant to 20

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<sup>1</sup> Claimant filed a previous claim for benefits on May 7, 2001, which was denied by the district director on November 13, 2002, because the evidence did not establish that claimant was totally disabled by a respiratory or pulmonary impairment. Director's Exhibit 1. Claimant took no further action on his 2001 claim.

<sup>2</sup> The recent amendments to the Black Lung Benefits Act, which became effective on March 23, 2010, do not apply to this claim because it was filed before January 1, 2005. The relevant version of all regulations cited in this Decision and Order may be found in 20 C.F.R. Parts 718, 725 (2013).

<sup>3</sup> The record indicates that claimant's coal mine employment was in West Virginia. Director's Exhibit 1. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

<sup>4</sup> Clinical pneumoconiosis is defined as "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent

C.F.R. §§718.202(a)(1),(2),(4) and 718.107, but that the medical opinion evidence established the existence of legal pneumoconiosis,<sup>5</sup> in the form of emphysema and obstructive lung disease due, in part, to coal mine dust exposure pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge therefore determined that a mistake in a determination of fact was made in his prior decision denying benefits. *See* 20 C.F.R. §725.310; Decision and Order at 35. The administrative law judge further found that the evidence established that claimant is totally disabled, pursuant to 20 C.F.R. §718.204(b)(2), and that legal pneumoconiosis is a substantially contributing cause of his total disability, pursuant to 20 C.F.R. §718.204(c). Finding that the evidence did not establish the date upon which claimant became totally disabled due to pneumoconiosis, the administrative law judge awarded benefits as of October 2004, the month in which claimant filed his claim.

On appeal, employer challenges the administrative law judge's findings of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4) and total disability due to pneumoconiosis at 20 C.F.R. §718.204(c), contending that the administrative law judge erred in referring to the preamble to the 2000 regulatory revisions when assessing the credibility of the medical opinions. Employer further asserts that the administrative law judge failed to properly resolve the conflicting evidence regarding the extent of claimant's smoking history, and erred in his determination that benefits are payable as of October 2004. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, urging the Board to reject employer's contention that the administrative law judge erred in considering the preamble in assessing the credibility of the physicians' opinions. Employer submitted a reply, reiterating its contentions.<sup>6</sup>

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deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

<sup>5</sup> Legal pneumoconiosis "includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

<sup>6</sup> Employer does not challenge the administrative law judge's finding that the evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2). That finding is therefore affirmed *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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 & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to benefits under the Act, claimant must establish by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

An administrative law judge may grant modification based on a change in conditions or because of a mistake in a determination of fact. 20 C.F.R. §725.310(a). When a request for modification is filed, "any mistake of fact may be corrected [by the administrative law judge], including the ultimate issue of benefits eligibility." *Betty B Coal Co. v. Director, OWCP [Stanley]*, 194 F.3d 491, 497, 22 BLR 2-1, 2-11 (4th Cir. 1999); *Jessee v. Director, OWCP*, 5 F.3d 723, 18 BLR 2-26 (4th Cir. 1993).

Employer asserts that the administrative law judge's resolution of the conflicts in the accounts of claimant's smoking history fails to comport with 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). Employer's Brief at 18. We disagree.

The administrative law judge reviewed the smoking histories contained in claimant's hearing testimony, medical treatment records, and the medical reports of record, and noted that there was "significant variability" in those histories.<sup>7</sup> Decision and

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<sup>7</sup> The administrative law judge reviewed the medical opinions in evidence and found the following cigarette smoking histories recorded for claimant, which are undisputed by the parties: A 1974 St. Luke's Hospital record noted that claimant was smoking two or three packs of cigarettes a day, and a 1996 St. Luke's Hospital record noted that he had quit smoking nine years ago. In 2001, Dr. Forehand recorded that claimant smoked two packs per day for thirty-five years; in 2004 Dr. Forehand recorded that claimant smoked for thirty-two years, from 1954 to 1986; and in 2006 Dr. Forehand recorded that claimant smoked one pack of cigarettes a day for thirty-seven years. In 2005, Dr. Rasmussen noted that claimant started smoking in 1954 at the age of eighteen, and smoked one pack per day until he quit in 1987. In an April 5, 2005 report, Dr. Zaldivar recorded that claimant smoked one pack per day from the time he was in his twenties until he quit around 1990. In a December 28, 2005 report, Dr. Zaldivar noted that claimant smoked one pack per day from his twenties until the 1980s. When deposed

Order at 5. Based on his determination that claimant's testimony was credible and supported by a majority of the histories recorded by the examining physicians, the administrative law judge found that claimant smoked from 1954 to 1988, for a total of thirty-four years.

As to the amount that claimant smoked, the administrative law judge found that claimant "credibly" testified that he smoked "a pack or so" a day, and that Drs. Rasmussen, Crisalli, and Zaldivar all noted a one-pack-per-day habit in their examination reports. Decision and Order at 7. Although Dr. Forehand's accounts varied regarding the amount that claimant smoked per day, the administrative law judge explained that he credited Dr. Forehand's most recent account of smoking one pack per day, because it was consistent with claimant's testimony, and with the smoking histories recorded by Drs. Rasmussen, Crisalli, and Zaldivar. Further, the administrative law judge discounted the 1974 hospitalization record notation that claimant was smoking two to three packs per day, because none of claimant's other medical treatment records mentioned a history of smoking two to three packs per day, and because "the source of the information obtained for the hospitalization records is unknown. . . ." Decision and Order at 8. The administrative law judge therefore explained that he accorded "greatest weight to the reports of examining physicians over sparse references to the miner's smoking history in hospitalization records," to find that claimant smoked one pack of cigarettes per day. Decision and Order at 8.

Based on the foregoing analysis set forth by the administrative law judge, we conclude that, contrary to employer's contention, the administrative law judge's finding that claimant smoked one pack per day for thirty-four years, ending in 1988, is adequately explained and is supported by substantial evidence.<sup>8</sup> *See Harman Mining Co.*

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on January 25, 2006, Dr. Zaldivar opined that 1974 hospital records indicated that claimant smoked one and one-half to two packs per day, and up to three packs per day, for "many years." In 2010, Dr. Crisalli noted a history of smoking one pack per day for twenty years, until the 1980s. In a treatment note, Dr. Reddy recorded that claimant "used to smoke one pack of cigarettes per day for 30 years but quit for 20 years." Dr. Ahmed recorded in a treatment note that claimant smoked for thirty-five years and had quit twenty years ago. Decision and Order at 5-7. Additionally, claimant's hearing testimony was that he started smoking at age eighteen, quit smoking in 1987 or 1988, and smoked "a pack or so" of cigarettes per day. Hearing Transcript at 25-26.

<sup>8</sup> Employer contends that the administrative law judge ignored Dr. Zaldivar's "uncontradicted testimony" that a patient's earliest smoking history recorded tends to be the most reliable. Employer's Brief at 19. As discussed above, however, the administrative law judge explained that he discounted the early, 1974 hospital record notation as inconsistent with claimant's testimony and with the other histories listed in

*v. Director, OWCP [Looney]*, 678 F.3d 305, 316, 25 BLR 2-115, 2-132-33 (4th Cir. 2012). As the length and extent of claimant's smoking history is a factual, not medical, determination that is committed to the administrative law judge's discretion, and as no abuse of discretion has been demonstrated, we affirm the administrative law judge's finding that claimant smoked one pack of cigarettes per day for thirty-four years. See *Bobick v. Saginaw Mining Co.*, 13 BLR 1-52, 1-54 (1988); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985); Decision and Order at 7-8.

Employer next challenges the administrative law judge's weighing of the medical opinion evidence in finding the existence of legal pneumoconiosis established at 20 C.F.R. §718.202(a)(4). The administrative law judge considered the medical opinions of Drs. Zaldivar, Renn, Crisalli, Rasmussen, and Forehand. Drs. Zaldivar, Renn, and Crisalli opined that claimant suffers from smoking-induced obstructive lung disease, while Drs. Rasmussen and Forehand opined that both smoking and coal mine dust exposure contributed to claimant's emphysema and obstructive lung disease. Director's Exhibits 12, 38-40, 45, 46, 55; Employer's Exhibits 5, 13. The administrative law judge discounted the opinions of Drs. Zaldivar, Renn, Crisalli, and Forehand because he found that they were insufficiently reasoned, but determined that Dr. Rasmussen's opinion was sufficiently documented and reasoned to establish the existence of legal pneumoconiosis. Decision and Order at 39-49.

Employer contends that the administrative law judge erred in referring to the preamble to the 2000 revisions to the regulations when he assessed the credibility of the medical opinions. Employer's contention lacks merit.

The preamble sets forth how the Department of Labor (DOL) chose to resolve questions of scientific fact underlying its 2000 revisions to the regulations, when it revised the definition of legal pneumoconiosis to include obstructive impairments arising out of coal mine employment. See *Looney*, 678 F.3d at 314, 25 BLR at 2-129-30; *A & E Coal Co. v. Adams*, 694 F.3d 798, 801, 25 BLR 2-203, 2-209-10 (6th Cir. 2012). Contrary to employer's contention, the administrative law judge acted within his discretion to evaluate expert opinions in conjunction with DOL's discussion of sound medical science set forth in the preamble. *Looney*, 678 F.3d at 314-15, 25 BLR at 2-130; *Adams*, 694 F.3d at 801-02, 25 BLR at 2-210-11; *Helen Mining Co. v. Director, OWCP [Obush]*, 650 F.3d 248, 24 BLR 2-369 (3d Cir. 2011).

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examination reports and treatment records. Thus, there was no need for the administrative law judge to discuss Dr. Zaldivar's testimony that an earlier smoking history, such as that noted in the 1974 hospital record, is more reliable. See *Amax Coal Co. v. Director, OWCP [Chavis]*, 772 F.2d 304, 306, 8 BLR 2-46, 2-48 (7th Cir. 1985).

Employer further asserts that the administrative law judge mischaracterized the physicians' opinions, evaluated the evidence inconsistently, and shifted the burden of proof from claimant to employer. Employer's arguments lack merit.

The administrative law judge accurately noted that Dr. Zaldivar cited the lack of radiological evidence of pneumoconiosis as a reason to conclude that claimant's emphysema is due to smoking, rather than coal mine dust exposure. Employer's Exhibit 13 at 29. The administrative law judge permissibly discounted Dr. Zaldivar's reasoning as inconsistent with the regulations, and with DOL's preamble discussion of the medical literature indicating that obstructive lung disease related to coal mine dust exposure may occur even in the absence of x-ray evidence of pneumoconiosis. *See* 20 C.F.R. §718.202(b); 65 Fed. Reg. 79,920, 79,940, 79,943 (Dec. 20, 2000); *Looney*, 678 F.3d at 314-15, 25 BLR at 2-130. Further, the administrative law judge reasonably discounted Dr. Zaldivar's opinion that coal mine dust and cigarette smoke do not damage the lungs by a similar enzymatic process, Employer's Exhibit 13 at 43, as it was inconsistent with DOL's position that coal mine dust-induced and cigarette smoke-induced obstructive impairments occur through similar mechanisms. *See* 65 Fed. Reg. at 79,943; *Looney*, 678 F.3d at 314-15, 25 BLR at 2-130. Finally, the administrative law judge acted within his discretion in finding that Dr. Zaldivar did not adequately explain his opinion that claimant has a reduced diffusion capacity, a type of impairment that Dr. Salivary opined cannot be caused by coal mine dust exposure, given Dr. Renn's opinion indicating that a reduction in diffusion capacity can be caused by pneumoconiosis. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Company v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); Director's Exhibit 38 at 23; Employer's Exhibit 13 at 48. Contrary to employer's contentions, therefore, the administrative law judge permissibly discounted Dr. Zaldivar's opinion that coal mine dust did not contribute to claimant's impairment.

Further, the administrative law judge accurately found that Dr. Renn relied on the disproportionate reduction in claimant's FEV1 and FVC values to conclude that claimant's impairment is due solely to smoking. Director's Exhibit 38 at 23. The administrative law judge permissibly accorded less weight Dr. Renn's opinion as inconsistent with DOL's view in the preamble that a reduction in the FEV1/FVC ratio is a marker for obstructive lung disease including that caused by coal mine employment. *See* 65 Fed. Reg. at 79,943; *Looney*, 678 F.3d at 314-15, 25 BLR at 2-130. Further, the administrative law judge found that Dr. Renn did not sufficiently explain his opinion that claimant's obstructive impairment progressed too rapidly to have been caused by coal mine dust exposure, Director's Exhibit 38 at 22, and employer does not challenge that

credibility determination.<sup>9</sup> It is therefore affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Employer contends that the administrative law judge failed to apply the same degree of scrutiny to Dr. Rasmussen's opinion that he applied to the opinions of employer's physicians, and asserts that Dr. Rasmussen's opinion is cursory, unexplained, and not well-reasoned. Employer's Brief at 20. We disagree. The administrative law judge found that Dr. Rasmussen examined and tested claimant, relied on accurate coal mine employment and smoking histories, and provided reasoning for his opinion that was consistent with the regulations and with DOL's findings in the preamble regarding the medical literature on coal mine dust and obstructive lung disease. Decision and Order at 48. The administrative law judge determined that, "[o]verall . . . Dr. Rasmussen's opinion is sufficiently reasoned and documented to support a finding of coal dust induced and smoking induced obstructive lung disease." Decision and Order at 48-49. It is within the purview of the administrative law judge to evaluate the evidence and make credibility determinations, and the Board will not substitute its judgment for that of the administrative law judge. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999). Substantial evidence supports the administrative law judge's permissible determination that Dr. Rasmussen's opinion was sufficiently documented and reasoned to establish legal pneumoconiosis. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76. That finding is therefore affirmed.

We likewise reject employer's contention that the administrative law judge shifted the burden of proof to employer. Throughout his decision, the administrative law judge placed the burden of proof on claimant to establish the existence of legal pneumoconiosis. Decision and Order at 39, 46, 49. We therefore reject employer's allegations of error, and affirm the administrative law judge's finding that claimant established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). We further affirm, as supported by substantial evidence, the administrative law judge's finding that all the evidence, weighed together, established legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a). *See Compton*, 211 F.3d at 211, 22 BLR at 2-174; Decision and Order at 49.

Pursuant to 20 C.F.R. §718.204(c), the administrative law judge found that Dr. Rasmussen's reasoned opinion, as supported by the opinion of Dr. Forehand, established

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<sup>9</sup> Additionally, the administrative law judge discounted Dr. Crissali's opinion as "conclusory," and "cursory" in its discussion of the etiology of claimant's impairment. Decision and Order at 41. Employer does not challenge that determination, which is therefore affirmed. *See Skrack*, 6 BLR at 1-711.

that legal pneumoconiosis is a substantially contributing cause of claimant's total disability. He discounted the contrary opinions of Drs. Zaldivar, Renn, and Crisalli, because the physicians did not diagnose claimant with legal pneumoconiosis. Because the administrative law judge did not find the opinions of Drs. Zaldivar, Renn, and Crisalli to be credible on the issue of legal pneumoconiosis, he could not credit their opinions on the causation of total disability, absent "specific and persuasive reasons for concluding that the doctor[s'] judgment on the question of disability causation d[id] not rest upon [their] disagreement with the [administrative law judge's] finding . . . ." *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995). We therefore affirm, as supported by substantial evidence, the administrative law judge's finding that claimant is totally disabled due to legal pneumoconiosis pursuant to 20 C.F.R. §718.204(c).

Lastly, employer challenges the administrative law judge's determination of the date for the commencement of benefits. Where, as here, modification is granted based on a mistake of fact, once entitlement to benefits is demonstrated, the date for the commencement of those benefits is determined by the month in which claimant became totally disabled due to pneumoconiosis. 20 C.F.R. §725.503(b),(d); *see Rochester & Pittsburgh Coal Co. v. Krecota*, 868 F.2d 600, 603-04, 12 BLR 2-178, 2-184-85 (3d Cir. 1989); *Lykins v. Director, OWCP*, 12 BLR 1-181, 1-182-83 (1989). If the date of onset of total disability due to pneumoconiosis is not ascertainable from all the relevant evidence of record, benefits will commence with the month during which the claim was filed, unless evidence credited by the administrative law judge establishes that claimant was not totally disabled due to pneumoconiosis at any subsequent time. 20 C.F.R. §725.503(b); *Green v. Director, OWCP*, 790 F.2d 1118, 1119 n.4, 9 BLR 2-32, 2-36 n.4 (4th Cir. 1986); *Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47, 1-50 (1990).

The administrative law judge found that Dr. Forehand's November 2004 report was the earliest evidence of total disability due to pneumoconiosis, but it indicated only that claimant became disabled due to pneumoconiosis at some time prior to Dr. Forehand's examination. Because the medical evidence did not establish when claimant became disabled due to pneumoconiosis, the administrative law judge awarded benefits as of October 2004, the month in which claimant filed his claim. Employer contends that remand is required, because the administrative law judge's reliance on Dr. Forehand's opinion as evidence that claimant became totally disabled due to pneumoconiosis by at least November 2004 "cannot be reconciled with" the administrative law judge's decision to "discredit [Dr. Forehand's] report on the merits." Employer's Brief at 23-24.

We reject employer's argument that a remand is required for further consideration of the commencement date for benefits. As an initial matter, we note that the administrative law judge did not completely discredit Dr. Forehand's 2004 diagnosis of total disability due to pneumoconiosis; he accorded it "little weight" and chose to give

“greater weight” to Dr. Rasmussen’s disability causation opinion, but he nevertheless found that Dr. Forehand’s opinion “len[t] support to” Dr. Rasmussen’s opinion. Decision and Order at 52. Moreover, employer has not explained how the administrative law judge’s determination of the benefits commencement date would change even if he were to disregard Dr. Forehand’s November 2004 opinion and focus solely on Dr. Rasmussen’s May 2005 opinion. As the administrative law judge found, medical evidence of total disability due to pneumoconiosis indicates only that claimant became totally disabled due to pneumoconiosis at some time prior to the date of that evidence. *See Merashoff v. Consolidation Coal Co*, 8 BLR 1-105, 1-109 (1985). Further, the administrative law judge did not credit any evidence that claimant was not totally disabled due to pneumoconiosis at any time subsequent to the filing date of his claim. Since the administrative law judge considered the record evidence and rationally found that the date upon which claimant became totally disabled due to pneumoconiosis could not be determined, he properly awarded benefits as of October 2004, the month in which claimant filed his claim. *See* 20 C.F.R. §725.503(b),(d); *Green*, 790 F.2d at 1119 n.4, 9 BLR at 2-36 n.4; *Owens*, 14 BLR at 1-50. We therefore affirm the administrative law judge’s finding as to the benefits commencement date.

Accordingly, the administrative law judge’s Decision and Order Awarding Living Miner’s Benefits is affirmed.

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge