BRB No. 11-0156 BLA

WANDA METCALF[1] (o/b/o Estate of CLESTO METCALF)	)	
Claimant-Respondent	)	
v.	)	DATE ISSUED: 10/27/2011
STRAIGHT CREEK MINING COMPANY	)	
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 Benefits of Robert B. Rae, Administrative Law Judge, United States Department of Labor.

Lois A. Kitts and James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky, for employer.

Jonathan Rolfe (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:

Employer appeals the Decision and Order Awarding Benefits (07-BLA-5712) of Administrative Law Judge Robert B. Rae rendered on a claim filed pursuant to the

[1] Claimant is the surviving spouse of the miner, who died on January 30, 2008. Director's Exhibit 60. She is pursuing his claim on behalf of his estate.

provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(*l*)) (the Act). This case involves a claim filed on November 26, 2003. Director's Exhibit 2. The administrative law judge credited the miner with "at least" fourteen years of coal mine employment,[2] Decision and Order at 25, and found that the evidence established the existence of complicated pneumoconiosis, entitling claimant to the irrebuttable presumption of total disability due to pneumoconiosis, set forth at 20 C.F.R. §718.304. The administrative law judge further found that claimant established that the miner's complicated pneumoconiosis arose out of coal mine employment, pursuant to 20 C.F.R. §718.203(b). Accordingly, the administrative law judge awarded benefits, commencing from the filing date of the miner's claim, and ordered benefits to be augmented.

On appeal, employer contends that the administrative law judge erred in his analysis of the x-ray, biopsy, CT scan, and medical opinion evidence to find that claimant was entitled to the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 718.304.[3] Employer also argues that the administrative law judge erred in awarding benefits to commence as of the date the miner filed his claim, and in failing to terminate benefits on the date the miner died. Employer lastly argues that the administrative law judge erred in ordering that the miner's award of benefits be augmented. Claimant did not file a response brief. The Director, Office of Workers' Compensation Programs (the Director), responds in support of the administrative law judge's award, to which employer replied.[4]

[2] The record reflects that the miner's coal mine employment was in Kentucky. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*); Director's Letter at 1 n.1.

[3] The administrative law judge's crediting of the miner with "at least" fourteen years of coal mine employment is unchallenged on appeal. Thus, this finding is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[4] Section 1556 of Public Law No. 111-148 amended the Act with respect to the entitlement criteria for certain claims. The administrative law judge, as well as the Director, Office of Workers' Compensation Programs, correctly state that the recent amendments to the Act, which became effective on March 23, 2010, and which apply to claims filed after January 1, 2005, do not apply to this claim filed before January 1, 2005. Decision and Order at 24 n.19, 25 n.21; Director's Letter at 5 n.3.

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 be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that the miner was 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. 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 is 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 an opacity 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 reveal a result equivalent to (A) or (B). *See* 20 C.F.R. §718.304.

The introduction of legally sufficient evidence of complicated pneumoconiosis does not automatically qualify a claimant for the irrebuttable presumption found at Section 718.304. The administrative law judge must first determine whether the evidence in each category tends to establish the existence of complicated pneumoconiosis, and then must weigh together the evidence at subsections (a), (b), and (c) before determining whether invocation of the irrebuttable presumption pursuant to Section 718.304 has been established. *See Gray v. SLC Coal Co.*, 176 F.3d 382, 389-90, 21 BLR 2-615, 2-628-29 (6th Cir. 1999); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991)(*en banc*).

Employer argues that the administrative law judge erred in weighing the evidence in each category pursuant to Section 718.304(a)-(c), and that the administrative law judge's error in finding that the biopsy evidence established the existence of simple pneumoconiosis tainted his findings with regard to whether the other categories of evidence established the existence of complicated pneumoconiosis. The Director characterizes employer's argument as asserting that the administrative law judge erred in relying on the biopsy evidence to establish complicated pneumoconiosis, and he contends that employer's argument lacks merit, because the administrative law judge specifically found that the biopsy evidence does not establish complicated pneumoconiosis. *See* Director's Letter at 3. As we will set forth, however, we agree with employer that the administrative law judge erred in evaluating the biopsy evidence, and that this error affected his evaluation of the other record evidence with regard to the existence of complicated pneumoconiosis. Further, the administrative law judge did not adequately explain his analysis of the x-ray and CT scan evidence. Therefore, we will vacate the

administrative law judge's finding of complicated pneumoconiosis, and remand this case to the administrative law judge for reconsideration.

20 C.F.R. §718.304(b)–Biopsy Evidence

In evaluating the biopsy evidence, the administrative law judge considered a fine needle aspiration of the right lower lobe of the lung performed on August 12, 2003, which was negative for malignancy, but which showed "dense fibrous tissue with anthracotic macrophages" and "birefrigent crystalline material within fibrotic area, highly suggestive of silicosis." Director's Exhibit 27 at 24. The administrative law judge also considered a bronchoscopy of the right middle lobe performed on December 15, 2003, which was also negative for malignancy, but which showed anthracotic pigment. *Id*. at 28. Lastly, the administrative law judge considered the review of the biopsies by Dr. Oesterling, who noted the presence of anthracotic pigment and silica, but stated that he was unable to diagnose pneumoconiosis based on the small amount of specimen provided. Director's Exhibit 54 at 4.

After considering the biopsy evidence, the administrative law judge concluded that "all the results indicate the presence of anthracotic pigmentation and a negative finding of malignancy," but that "[n]one provided a diagnosis of [coal workers' pneumoconiosis] CWP." Decision and Order at 14. The administrative law judge correctly noted that a "finding of anthracotic pigmentation, by itself, is not sufficient to establish the existence of pneumoconiosis," *citing* 20 C.F.R. §718.202(a)(2). *Id*. at n.13. Later, however, the administrative law judge found that the biopsy evidence was "consistent with a diagnosis of pneumoconiosis" and "showed the presence of pneumoconiosis." *Id*. at 21, 23. The administrative law judge never reconciled his earlier conclusion, that the biopsy evidence did not contain a diagnosis of CWP, with his later findings that the biopsy evidence was consistent with, and showed, simple pneumoconiosis.[5] The administrative law judge went on to find that complicated pneumoconiosis was established, based on the x-ray and CT scan evidence that he found showed a large opacity, and because the biopsy evidence established that the opacity was pneumoconiosis, and ruled out cancer. *Id.* Further, the administrative law judge discredited the medical opinions of employer's physicians because he found that they did not adequately address the biopsy results. Decision and

[5] The Director characterizes the administrative law judge's finding with respect to the biopsies as "not in themselves establishing pneumoconiosis." Director's Letter at 2. The administrative law judge, however, inconsistently found that "[none of the biopsy evidence] provided a diagnosis of [coal workers' pneumoconiosis] CWP," Decision and Order at 14, but then found that the "biopsy results are consistent with a diagnosis of pneumoconiosis," *Id*. at 21, and that the "biopsies showed the presence of pneumoconiosis." *Id*. at 23.

Order at 23. Because the administrative law judge's findings regarding the biopsy were inexplicably inconsistent, and they affected his analysis of whether all the relevant evidence established the existence of complicated pneumoconiosis, the Board is unable to determine whether substantial evidence supports his finding of complicated pneumoconiosis.

Consequently, we must vacate the administrative law judge's finding that the biopsy evidence established the existence of pneumoconiosis, and remand this case to the administrative law judge for an explanation of this issue. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*). Because the administrative law judge weighed the remaining categories of evidence against his finding that the biopsy evidence "showed the presence of pneumoconiosis," Decision and Order at 23, we additionally vacate the administrative law judge's findings pursuant to Section 718.304(a) and (c), and remand this case to the administrative law judge for a re-evaluation of all the evidence. In the interest of judicial economy, we will now address employer's allegations of error regarding the administrative law judge's analysis of the x-ray, CT scan, and medical opinion evidence.

20 C.F.R. §718.304(a)–X-ray Evidence

Pursuant to Section 718.304(a), the administrative law judge considered ten readings of four x-rays. Dr. Miller, a Board-certified radiologist and B reader, interpreted the June 20, 2003 x-ray as "1/2" for small opacities of simple pneumoconiosis, and as negative for complicated pneumoconiosis. Director's Exhibit 27 at 5, 6. Dr. Wiot, also a Board-certified radiologist and B reader, interpreted this x-ray as unreadable. Employer's Exhibit 1. Dr. Baker, a B reader, interpreted the February 2, 2004 x-ray as "1/2" for small opacities of simple pneumoconiosis, and as positive for Category A large opacities. Director's Exhibit 11 at 1. Dr. Miller reread this x-ray as "1/2" for small opacities of simple pneumoconiosis, and as positive for Category A large opacities; however, on both the form for his roentgenographic interpretation and the cover sheet summary of his findings he indicated complicated pneumoconiosis (A) versus neoplasm or granulomatous infection. Claimant's Exhibit 3. Dr. Wiot interpreted the same x-ray as negative for small opacities of simple pneumoconiosis, and as negative for large opacities.[6] Employer's Exhibit 8.

Dr. Broudy, a B reader, interpreted the July 13, 2004 x-ray as negative for small opacities of simple pneumoconiosis, and as negative for large opacities of complicated

[6] Dr. Barrett, a Board-certified radiologist and B reader, reviewed the February 2, 2004 x-ray to assess its film quality only. Director's Exhibit 12 at 1.

pneumoconiosis. Employer's Exhibit 11. Dr. Alexander, a Board-certified radiologist and B reader, interpreted this x-ray as "1/1" for small opacities, and as negative for large opacities. Claimant's Exhibit 2. Dr. Wiot classified the same x-ray as negative for small opacities, and as negative for large opacities. Employer's Exhibit 7. Dr. Cappiello, a Board-certified radiologist and B reader, interpreted the August 29, 2005 x-ray as "2/1" for small opacities, and as positive for Category A large opacities. Claimant's Exhibit 1. Dr. Wiot interpreted the same x-ray as negative for small opacities of simple pneumoconiosis, and as negative for large opacities. Employer's Exhibit 6.

The administrative law judge found that the weight of the x-ray interpretations established the existence of simple and complicated pneumoconiosis. Decision and Order at 19-20. The administrative law judge found that the June 20, 2003 x-ray indicated simple but not complicated pneumoconiosis, crediting Dr. Miller's reading of the x-ray over that of Dr. Wiot. The administrative law judge found that the February 2, 2004 x-ray established both simple and complicated pneumoconiosis, crediting the readings by Drs. Miller and Baker over that of Dr. Wiot. The administrative law judge lastly found that the remaining x-rays, dated July 13, 2004 and August 29, 2005, did not establish simple or complicated pneumoconiosis, as the administrative law judge found that these two x-rays were in equipoise. *Id*.

Regarding the readings of the February 2, 2004 x-ray, the administrative law judge stated that Drs. Miller and Wiot, both dually-qualified physicians, were "diametrically opposed in their readings," noting that Dr. Miller interpreted the x-ray for simple pneumoconiosis and a Category A large opacity, indicative of complicated pneumoconiosis, after additionally considering whether it was a neoplasm or a granulomatous disease. Decision and Order at 19. The administrative law judge noted that Dr. Wiot interpreted the x-ray as negative for pneumoconiosis, although he observed an infiltrate at the right base, cause unknown. The administrative law judge considered that Dr. Baker, a B reader, interpreted this x-ray as positive for both simple pneumoconiosis and a Category A large opacity. After summarizing these readings, the administrative law judge concluded that "the weight of this evidence supports a finding of simple and complicated pneumoconiosis." *Id*. In making this determination, the administrative law judge noted that he had "considered the effect of EX-16's information about Dr. Baker's licensure issues to have no effect on the reading or his opinion in this case."[7] *Id*. at 19 n.15.

[7] Employer's Exhibit 16 contains an Agreed Order, in effect from July 16, 2009 through July 16, 2012, between Dr. Baker and the Commonwealth of Kentucky's Board of Medical Licensure, as a result of an investigation into Dr. Baker's prescriptions of controlled substances. Employer asserted before the administrative law judge that Dr. Baker "is not in good standing with the Board of Medical Licensure in the

Employer argues that the administrative law judge relied upon a head count to resolve the conflict in the February 2, 2004 x-ray evidence. Employer also argues that the administrative law judge failed to explain why he found that the restriction of Dr. Baker's medical license and his surrender of his Drug Enforcement Administration (DEA) license did not affect the doctor's credibility. Employer further argues that the administrative law judge failed to consider the academic credentials of Dr. Wiot, or the fact that Dr. Wiot assisted in the creation of the National Institute of Occupational Safety and Health (NIOSH) International Labour Organization (ILO) standards. Lastly, employer argues that the administrative law judge failed to consider Dr. Pathak's reading of the June 20, 2003 x-ray. Employer's arguments have merit.

With regard to the February 2, 2004 x-ray, the administrative law judge did not explain why he found that the weight of the readings established both simple and complicated pneumoconiosis. See *Woodward v. Director, OWCP*, 991 F.2d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993). On remand, he must explain the basis for his determination as to whether this x-ray establishes the existence of complicated pneumoconiosis.[8] *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Clark*, 12 BLR at 1-155. Additionally, the administrative law judge must include the rationale for his determination of whether Dr. Baker's licensure issues affect the credibility of his x-ray reading. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103.

The administrative law judge also did not explain why he found that the July 13, 2004 x-ray did not establish the absence of complicated pneumoconiosis, in light of the fact that both dually-qualified readers, Drs. Alexander and Wiot, interpreted this x-ray as negative for complicated pneumoconiosis. Thus, the administrative law judge's finding, that "[t]hese readings overall are not supportive of a finding of simple or complicated pneumoconiosis," avoids the issue of whether this x-ray weighs against a finding of

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Commonwealth of Kentucky. His medical license is restricted and he has surrendered his DEA license." Employer's Post Hearing Brief at 6-7. Employer also argued briefly before the administrative law judge that, "Dr. Baker's opinion, which his recent licensure problems cast in doubt, is not well reasoned and is entitled to diminished weight." *Id*. at 17.

[8] The Director asserts that the February 2, 2004 x-ray establishes claimant's entitlement to the irrebuttable presumption of total disability due to pneumoconiosis at Section 718.304, but does not explain why this x-ray should be accorded determinative weight. Director's Letter at 3. Moreover, the Director asserts that Dr. Wiot's negative reading of the February 2, 2004 x-ray was discounted because it was "inherently equivocal," but this is not apparent to the Board from a review of the administrative law judge's finding. Director's Letter at 4; Decision and Order at 19.

complicated pneumoconiosis. Decision and Order at 20. On remand, the administrative law judge must re-evaluate the July 13, 2004 x-ray, and explain his determination as to whether this x-ray is negative for complicated pneumoconiosis. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Clark*, 12 BLR at 1-155.

The administrative law judge did not explain why the August 29, 2005 x-ray readings by Drs. Cappiello and Wiot are in equipoise. On remand, he must do so. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Clark*, 12 BLR at 1-155. Similarly, the administrative law judge did not explain why he credited Dr. Miller's reading of the June 20, 2003 x-ray over Dr. Wiot's opinion that the x-ray was unreadable for the existence of pneumoconiosis, to find that claimant established the existence of simple pneumoconiosis, but not complicated pneumoconiosis, based on this x-ray. Thus, on remand, the administrative law judge must provide a valid rationale for crediting Dr. Miller's reading of the June 20, 2003 x-ray over that of Dr. Wiot. *Id*.

Furthermore, as employer argues, the administrative law judge did not consider Dr. Pathak's reading of the June 20, 2003 x-ray, which the doctor read as "1/2" for small opacities, but negative for any large opacities. Director's Exhibit 27 at 3, 4. Employer included Dr. Pathak's reading in its recitation of the medical evidence in its Post Hearing Brief before the administrative law judge. Employer's Post Hearing Brief at 9. However, a review of the parties' evidence summary forms shows that Dr. Pathak's reading was not designated by any party. Thus, the admissibility of Dr. Pathak's reading is unclear. Because we vacate the administrative law judge's finding regarding the x-ray evidence, we instruct the administrative law judge, on remand, to consider the admissibility of Dr. Pathak's reading, and if it is found admissible, to weigh it together with the other readings of the June 20, 2003 x-ray.

In reweighing the x-ray evidence, the administrative law judge must take into account the additional qualifications of Dr. Wiot as a professor in radiology and developer of the NIOSH ILO standards; however, contrary to employer's contention, he is not required to credit Dr. Wiot's readings on this basis. *See Chaffin v. Peter Cave Coal Co.*, 22 BLR 1-294, 1-302 (2003); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993). Finally, after considering each individual x-ray, the administrative law judge must determine whether the overall weight of the x-ray evidence establishes the existence of complicated pneumoconiosis, and state a rationale for this finding. *See Melnick*, 16 BLR at 1-33.

20 C.F.R. §718.304(c)-CT Scan Evidence

Pursuant to Section 718.304(c), the administrative law judge found that the CT scan readings "overall are supportive of a determination of the presence of a large mass

in excess of [one centimeter] and indicative of the presence of complicated pneumoconiosis." Decision and Order at 21. Dr. Broudy performed a CT scan on July 13, 2004, and interpreted it as negative for pneumoconiosis, with a lesion in the right lower lobe that was suspicious for cancer. Employer's Exhibit 11 at 3. CT scans taken on December 3, 2006, April 12, 2007, and June 6, 2007, while the miner was hospitalized, were read as showing pulmonary nodules in the right middle lobe, with a large nodule measuring 3 centimeters by 2.2 centimeters, indicative of pneumoconiosis or cancer. Employer's Exhibit 13 at 18-19, 26-27, 46-48. Dr. Wiot reread all of the CT scans taken while the miner was hospitalized, as negative for pneumoconiosis. Employer's Exhibits 2, 9, 17. However, Dr. Wiot identified the mass in the right middle lobe, measuring 2.2 centimeters by 3.2 centimeters, as either a malignancy or an inflammatory process. *Id*.

Employer argues that the administrative law judge erred in finding that the CT scans establish complicated pneumoconiosis, since no CT scan reading confirmed a diagnosis of complicated pneumoconiosis.[9] In view of the lack of explanation by the administrative law judge as to how he determined that the CT scan evidence was "indicative of the presence of complicated pneumoconiosis," Decision and Order at 21, we vacate his findings with regard to the CT scan evidence, and remand this case to him for reconsideration of whether the CT scan evidence establishes the existence of complicated pneumoconiosis. The administrative law judge, on remand, must explain his findings. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Clark*, 12 BLR at 1-155.

20 C.F.R. §718.304(c)-Medical Opinion Evidence

Pursuant to Section 718.304(c), the administrative law judge lastly discussed the medical opinions of record. Dr. Baker, in his report dated February 2, 2004, diagnosed the miner with simple clinical and complicated pneumoconiosis, and legal pneumoconiosis, including chronic bronchitis, chronic obstructive pulmonary disease (COPD), and hypoxemia, due to both coal mine dust exposure and smoking. Director's Exhibit 11 at 11. Clarifying this report through a supplemental report dated February 12, 2008, Dr. Baker stated that his diagnoses of simple clinical and complicated pneumoconiosis were based on the results of x-ray and biopsy evidence, and that his diagnosis of chronic bronchitis, which is included in the diagnosis of COPD, was based on the miner's symptoms of a productive cough for five years. Director's Exhibit 60 at 4-5.

[9] The Director asserts that the administrative law judge did not find that the CT scans establish complicated pneumoconiosis, "on their own." Director's Letter at 3.

In his report dated July 13, 2004, Dr. Broudy diagnosed moderately severe chronic obstructive airways disease due to smoking, and a right lower lobe lesion, suspicious for cancer. Employer's Exhibit 11. Dr. Broudy testified by deposition on March 15, 2010, that the miner's airway disease was not due to coal mine dust exposure because the defect was obstructive in nature and not restrictive, the miner's pulmonary problems started after he left the mines, and because the miner had a lengthy smoking history, which continued long after he stopped working in the mines. Employer's Exhibit 12 at 11-12, 13-14, 17. Dr. Wiot testified by deposition on March 12, 2010, that CT scans are medically acceptable. Employer's Exhibit 10 at 5-6. Dr. Wiot also testified that the miner did not have pneumoconiosis, based on his rereadings of certain x-rays and CT scans. *Id*. at 9-11.

The administrative law judge gave more weight to Dr. Baker's diagnosis of complicated pneumoconiosis, because he found that it was well-documented and well-reasoned, as it was based on "sound and objective medical evidence, including the biopsy results," and because it was "supported by the medical record." Decision and Order at 23. The administrative law judge gave little weight to Dr. Broudy's opinion because it "border[ed] on 'being hostile to the Act.'" *Id*. The administrative law judge considered only that part of Dr. Wiot's deposition testimony stating that CT scans are medically acceptable, as a medical report. *Id*. The administrative law judge stated that, if he were to consider Dr. Wiot's deposition testimony in its entirety as a medical report, he would find it "wanting," in that Dr. Wiot did not examine the miner or review his medical records, but merely reread certain x-rays and CT scans. *Id*.

In light of our decision to vacate the administrative law judge's findings regarding the biopsy, x-ray, and CT scan evidence, we also vacate the administrative law judge's finding that Dr. Baker's opinion merited greater weight because it was based on the x-ray and biopsy evidence. On remand, after reweighing the x-rays, biopsies, CT scans, and medical opinions, the administrative law judge should weigh all the relevant evidence together to determine whether claimant has established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. *See Gray*, 176 F.3d at 389-90, 21 BLR at 2-628-29; *Melnick*, 16 BLR at 1-33.

Since the administrative law judge's finding of entitlement to benefits is vacated, we also vacate his onset date finding. If, on remand, the administrative law judge finds that claimant establishes entitlement to benefits, he must again determine the date from which benefits commence. Once entitlement to benefits is demonstrated, the date for the commencement of those benefits is determined by the month in which the miner became totally disabled due to pneumoconiosis. 20 C.F.R. §725.503; *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). Where benefits are awarded based on the application of the irrebuttable presumption, the date upon which the miner's

simple pneumoconiosis became complicated pneumoconiosis determines the onset date. *Williams v. Director, OWCP*, 13 BLR 1-28, 1-30 (1989). When the evidence does not establish the date that the miner's simple pneumoconiosis became complicated pneumoconiosis, the onset date is the month in which the claim was filed, unless the evidence affirmatively establishes that the miner had only simple pneumoconiosis for any period subsequent to the date of filing. *Id.* Further, if, on remand, the administrative law judge awards benefits on the miner's claim, the administrative law judge should clarify that benefits are augmented to reflect one dependent, the miner's surviving spouse.[10] *See* 20 C.F.R. §725.520(c).

Lastly, employer argues that the administrative law judge erred by not specifying a termination date for benefits, given that the miner died on January 30, 2008. Employer cites no authority for its argument that an administrative law judge is required to make such a determination. If benefits are awarded on remand, the regulations specify that a miner is entitled to receive benefits through the month before the month in which the miner dies. 20 C.F.R. §725.203(b)(1).

[10] As the administrative law judge noted, employer's counsel, at the hearing, stipulated that claimant "is a proper dependent." Decision and Order at 3; Hearing Transcript at 14.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed in part and vacated in part, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

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