



BRB No. 21-0178 BLA

RICHARD WARD)	
)	
Claimant-Respondent)	
)	
v.)	
)	
CONSOLIDATION COAL COMPANY)	
)	
and)	
)	
SELF-INSURED THROUGH CONSOL)	DATE ISSUED: 12/14/2021
ENERGY, INCORPORATED)	
)	
Employer/Carrier-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of Decision and Order Awarding Benefits of Richard M. Clark,
Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton,
Virginia, for Claimant.

Jeffrey R. Soukup (Jackson Kelly PLLC), Lexington, Kentucky, for
Employer.

Before: BOGGS, Chief Administrative Appeals Judge, ROLFE and JONES,
Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Richard M. Clark's Decision and Order Awarding Benefits (2019-BLA-05561) rendered on a claim filed on January 26, 2017, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with 36.65 years of coal mine employment and found he has complicated pneumoconiosis, thereby invoking the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. The ALJ further found Claimant's complicated pneumoconiosis arose out of his coal mine employment and awarded benefits. 20 C.F.R. §718.203(b). He set the date benefits commence as April 2016.

On appeal, Employer contends the ALJ erred in setting the commencement date for benefits.¹ Claimant responds, agreeing with Employer the ALJ erred in determining the commencement date. The Director, Office of Workers' Compensation Programs, has declined to respond to Employer's appeal, unless requested to do so.

The Benefit Review Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.² 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

The commencement date for benefits is the month in which the miner became totally disabled due to pneumoconiosis. 20 C.F.R. §725.503; *see Lykins v. Director, OWCP*, 12 BLR 1-181, 1-184 (1989). Where a miner suffers from complicated pneumoconiosis, the fact-finder must consider whether the evidence establishes the date of onset of the disease. *See Williams v. Director, OWCP*, 13 BLR 1-28, 1-30 (1989). If not, the commencement date is the month in which the claim was filed, unless the evidence establishes the miner had only simple pneumoconiosis for any period subsequent to the date of filing. In that case, the date for the commencement of benefits follows the period of simple pneumoconiosis. *Williams*, 13 BLR at 1-30; 20 C.F.R. §725.503(b).

The ALJ found the "record does not establish when Claimant's simple pneumoconiosis became complicated pneumoconiosis," and thus set the commencement

¹ We affirm, as unchallenged on appeal, the ALJ's finding that Claimant has complicated pneumoconiosis and established entitlement to benefits. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 13.

² The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 14.

date for benefits as the filing date of the claim. Decision and Order at 16-17. No party challenges this finding. Thus we affirm it. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Although the ALJ recognized Claimant filed this claim in January 2017, he set a commencement date of April 2016. Decision and Order at 2, 17. We agree with the parties's contentions that this appears to be a scrivener's error. Consequently, we modify the ALJ's decision to reflect that benefits are payable from January 2017, the month in which Claimant filed his claim. 20 C.F.R. §725.503(b).

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed, as modified to reflect a commencement date of January 2017 for the payment of benefits.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge