

BRB No. 98-1622 BLA

RICHARD D. BARNHART)	
)	
Claimant-Respondent)	
)	
v.)	DATE ISSUED:
)	
CLINCHFIELD COAL 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 Granting Benefits of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Timothy W. Gresham (Penn Stuart & Eskridge), Abingdon, Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Decision and Order Granting Benefits (97-BLA-1074) of Administrative Law Judge Pamela Lakes Wood awarding benefits on a claim 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 claimant had worked for fourteen years as a miner.¹ The administrative law judge also found, based on her consideration of the medical evidence and employer's concession, that claimant established the presence of pneumoconiosis and that he was entitled to the presumption that his pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203. Hearing Transcript at 9. The

¹Claimant is the miner, Richard D. Barnhart, who filed his application for benefits on October 7, 1996. Director's Exhibit 1.

administrative law judge further found the evidence sufficient to establish the presence of complicated pneumoconiosis pursuant to Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304. Accordingly, benefits were awarded effective February 1, 1990. On appeal, employer argues that the administrative law judge did not properly determine the date of onset of claimant's complicated pneumoconiosis. Claimant and the Director, Office of Workers' Compensation Programs, have not participated in this appeal.²

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is 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).

Employer contends that the administrative law judge erred by finding that the date of onset of total disability is established by the date of the first evidence in which complicated pneumoconiosis is diagnosed, rather than the date of the evidence which the administrative law judge credits as demonstrating the existence of complicated pneumoconiosis. Employer also maintains that benefits are payable not from the first evidence of complicated pneumoconiosis, but from the date complicated pneumoconiosis is proven. Employer asserts, therefore, that benefits should have been awarded as of October 1, 1996 - the month in which claimant filed his claim - or November 1, 1996 - the month of the first x-ray evidence which the administrative law judge found established the presence of large opacities.

In determining that benefits are payable effective February 1, 1990, the administrative law judge cited 20 C.F.R. §725.503(b), which provides that the date for commencement of benefits is the month of onset of total disability and that where the evidence fails to establish the date of onset, benefits are payable beginning with

²We affirm the administrative law judge's findings that claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis set forth in 20 C.F.R. §718.304 and that claimant is entitled to benefits, as they are unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

the month during which the claim was filed. The administrative law judge further stated that when, as in the present case, the miner establishes that he has complicated pneumoconiosis pursuant to Section 718.304, “as a general rule the onset date is the month during which complicated pneumoconiosis was first diagnosed.” Decision and Order at 11 (citing *Truitt v. North American Coal Corp.*, 2 BLR 1-199 (1979)). Accordingly, the administrative law judge awarded benefits as of February 1990, the date of the first x-ray reading diagnosing complicated pneumoconiosis.

We hold that the administrative law judge did not properly determine the date of onset of claimant’s complicated pneumoconiosis. In this case, in determining whether the evidence establishes an onset date of total disability, the fact-finder must consider whether the evidence of record establishes an onset date of the miner’s complicated pneumoconiosis.³ See *Williams v. Director, OWCP*, 13 BLR 1-28 (1989); *Truitt, supra*. If the evidence does not establish this date, benefits are payable as of the month claimant filed his claim. 20 C.F.R. §725.503(b); *Williams, supra*; *Truitt, supra*. In the present case, the administrative law judge found that the mere existence of two readings of a film dated February 8, 1990, as positive for complicated pneumoconiosis established the date of onset. Decision and Order at 11. The administrative law judge’s reliance upon these x-ray interpretations appears to conflict with her weighing of this evidence under Section 718.304(a), inasmuch as she concluded thereunder that the interpretations of the film dated February 8, 1990 did no more than establish “at least the presence of simple pneumoconiosis.” Decision and Order at 8. Accordingly, we vacate the administrative law judge’s finding with respect to the date of onset of total disability and remand to case to the administrative law judge for reconsideration of this issue. On remand, the administrative law judge should determine whether the credible evidence of record establishes the onset date of claimant’s complicated pneumoconiosis. See *Williams, supra*; *Truitt, supra*; see also *Lykins v. Director*, 12 BLR 1-181 (1989). If the evidence does not establish this date, benefits are payable from the date of filing of the instant claim. 20 C.F.R. §725.503(b); see *Williams, supra*.

³In *Truitt v. North American Coal Corp.*, 2 BLR 1-199 (1979), the Board did not indicate that “as a general rule, the onset date is the month during which complicated pneumoconiosis was first diagnosed.” Decision and Order at 11. Rather, the Board held that a miner is entitled to benefits as of the date that probative evidence demonstrates that he suffers from complicated pneumoconiosis; not the first month in which he discovers that he has the disease. *Truitt*, 2 BLR at 1-204.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge