

BRB No. 99-0574 BLA

JAKE B. GROWE)	
)	
Claimant-Respondent)	
)	
v.)	
)	
EASTERN ASSOCIATED COAL)	DATE ISSUED:
CORPORATION)	
)	
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 and Supplemental Decision and Order of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

S. F. Raymond Smith (Rundle & Rundle, L. C.), Pineville, West Virginia, for claimant.

Paul E. Frampton (Bowles, Rice, McDavid, Graff & Love), Fairmont, West Virginia, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and BROWN, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order and Supplemental Decision and Order (97-BLA- 1826) of Administrative Law Judge Linda S. Chapman granting 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). Claimant filed a claim for benefits on January 17, 1997. The administrative law judge found that claimant established thirty-nine years of coal mine employment. The administrative law judge found that the x-ray evidence was sufficient to establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304, entitling claimant to the irrebuttable presumption of total disability due to pneumoconiosis. Decision and Order at 12. Further, the administrative law judge found that claimant established that his pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b). Accordingly, benefits were awarded. The

Director, Office of Workers' Compensation Programs (the Director), filed a Motion for Reconsideration, requesting that the administrative law judge make a specific finding as to the onset date for the payment of benefits. In response, the administrative law judge determined that claimant was entitled to benefits as of March, 1997.

Employer appeals, arguing that the administrative law judge erred in finding the existence of complicated pneumoconiosis. Claimant has filed a response brief supporting affirmance of the administrative law judge's decision awarding benefits. The Director has submitted a letter stating that he will not participate in the appeal before the Board, unless specifically requested to do so by the Board.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon the Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The relevant evidence in the instant case is as follows: The record contains eleven x-ray interpretations and two CT scan interpretations. All of the x-ray interpretations were positive for pneumoconiosis. Of these, four were positive for complicated pneumoconiosis. Director's Exhibits 10-12; Employer's Exhibit 3. One of these readings was by a physician who was both a B reader and a Board-certified radiologist, two of these readings were by doctors who were B readers, and one of these readings was by a physician who was not listed as a B reader or Board-certified radiologist. The two CT scan interpretations were by Dr. Wheeler, who diagnosed minimal pneumoconiosis for one CT scan and found that the other CT scan could be pneumoconiosis. Dr. Wheeler is both a B reader and a Board-certified radiologist. Employer's Exhibit 1. There are three relevant medical opinions of record. Dr. Vasudevan diagnosed, *inter alia*, heart disease and coal workers' pneumoconiosis. Director's Exhibit 15. Dr. Zaldivar reported a normal examination of the lungs, and noted, *inter alia*, a history of heart disease and shortness of breath. Employer's Exhibit 3. Dr. Tuteur opined that claimant has pneumoconiosis if the assumption of silica exposure in the coal mine industry is correct. Employer's Exhibit 2, Report at 7. Dr. Tuteur also stated, "chest radiographs are always interpreted as consistent with an interstitial pulmonary process not atypical for silicosis or infectious granulomatous disease and associated with A or B sized conglomerates. This radiographic interpretation is confirmed by CT scan." *Id.*, Report at 3; see also Report at 5.

The administrative law judge found that because the physicians who reviewed the x-rays unanimously concluded that claimant has pneumoconiosis, claimant established the existence of (simple) pneumoconiosis by a preponderance of the x-ray evidence. Decision and Order at 5-6.¹ With regard to complicated pneumoconiosis, the administrative law

¹ Because we affirm the administrative law judge's finding that the existence of complicated pneumoconiosis is established pursuant to 20 C.F.R. §718.304, we need not remand this case for a weighing of all the evidence at 20 C.F.R. §718.202(a)(1)-(4) pursuant to *Island*

judge stated that she was not required to defer to the numerical superiority of x-ray interpretations with no findings of large opacities. *Id.* at 6-7. The administrative law judge discounted Dr. Wheeler's opinion and credited the four x-ray interpretations of complicated pneumoconiosis, together with Dr. Tuteur's report, to find complicated pneumoconiosis established. *Id.* at 12.

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we hold that the administrative law judge's Decision and Order is supported by substantial evidence, that the administrative law judge acted within her discretion in weighing the evidence and assessing the credibility of the doctors, and that there is no reversible error contained in the administrative law judge's Decision and Order. See generally *Peabody Coal Co. v. Benefits Review Board*, 560 F.2d 797, 802, 1 BLR 2-133, 2-138 (7th Cir. 1977); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Calfee v. Director, OWCP*, 8 BLR 1-7, 1-10 (1985). We therefore affirm the administrative law judge's Decision and Order. Further, we affirm the administrative law judge's Supplemental Decision and Order setting an onset date for benefits since it is not contested on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Accordingly, we affirm the administrative law judge's Decision and Order granting benefits and the administrative law judge's Supplemental Decision and Order setting an onset date for benefits.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge