

BRB No. 96-1385 BLA

ERNEST GOODSON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	DATE ISSUED:
CARBON FUEL COMPANY	)	
	)	
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	DECISION and ORDER
Party-in-Interest	)	

Appeal of the Decision and Order on Remand of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

George P. Surmaitis (Crandall, Pyles & Haviland), Charleston, West Virginia, for claimant.

John W. Walters (Jackson & Kelly), Lexington, Kentucky, for employer.

Before: BROWN, DOLDER, and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand (85-BLA-1570) of Administrative Law Judge Ralph A. Romano awarding benefits on a claim<sup>1</sup> 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). This case is before the Board for the third time. The administrative law judge initially awarded benefits in a Decision and Order issued on August 26, 1987. Because the method used by the administrative law judge to find invocation of the interim presumption established pursuant to 20 C.F.R. §727.203(a) was

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<sup>1</sup> Claimant is Ernest Goodson, the miner, who filed this application for benefits on October 16, 1978. Director's Exhibit 1.

no longer valid when employer appealed the Decision and Order, the Board vacated the administrative law judge's findings pursuant to Section 727.203(a)(1)-(4) and remanded the case for him to consider invocation under current law.<sup>2</sup> *Goodson v. Carbon Fuel Co.*, BRB No. 87-2602 BLA (May 31, 1989)(unpub.).

On remand, the administrative law judge found invocation of the interim presumption established pursuant to Section 727.203(a)(1), (4) and awarded benefits. Pursuant to employer's appeal, the Board vacated the administrative law judge's finding pursuant to Section 727.203(a)(1) because he improperly discredited certain x-ray readings based on their film quality ratings and failed to consider whether another reading was properly classified under the ILO/UC system as required by 20 C.F.R. §§727.206 and 410.428. The Board also vacated the administrative law judge's finding pursuant to Section 727.203(a)(4) because he failed to consider the qualifications of all the physicians and did not explain why he found certain medical opinions better documented and reasoned than others. *Goodson v. Carbon Fuel Co.*, BRB No. 95-0798 BLA (Aug. 22, 1995)(unpub.). Accordingly, the Board remanded the case for the administrative law judge to reconsider invocation under these two subsections.

On remand, the administrative law judge reconsidered the evidence and found invocation of the interim presumption established pursuant to Section 727.203(a)(1) based on the weight of the positive x-ray readings by Board-certified radiologists and B-readers. He also found invocation established at Section 727.203(a)(4) based on the medical opinions he found to be well documented and reasoned, viewed in light of the physicians' qualifications.

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<sup>2</sup> The Board affirmed as unchallenged on appeal the administrative law judge's finding that rebuttal of the presumption was not established pursuant to 20 C.F.R. §727.203(b)(1), and affirmed as supported by substantial evidence his findings that rebuttal was not established pursuant to Section 727.203(b)(2) or (3). *Goodson v. Carbon Fuel Co.*, BRB No. 87-2602 BLA (May 31, 1989)(unpub.). Pursuant to employer's motion for reconsideration, the Board modified its order slightly for reasons that are not the subject of this appeal. *Goodson v. Carbon Fuel Co.*, BRB No. 87-2602 BLA (Jan. 11, 1994)(unpub.).

On appeal, employer contends that the administrative law judge erred in weighing the medical evidence pursuant to Section 727.203(a)(1) and (4). Claimant responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), has declined to participate in this appeal.<sup>3</sup>

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 law. 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).

Pursuant to Section 727.203(a)(1), the administrative law judge found invocation of the interim presumption established because "the majority of positive x-rays [were] read by physicians who are both Board[-c]ertified [r]adiologist[s] and B-readers." [1996] Decision and Order on Remand at 2. Substantial evidence supports the administrative law judge's finding that, even excluding the unclassified reading relied upon in his prior decision, "four of the positive x-ray readings are by physicians who are both Board[-c]ertified [r]adiologists and B-readers, while only three of the negative interpretations are by physicians who are both Board[-c]ertified radiologists and B-readers." [1996] Decision and Order at 2; Director's Exhibits 21-23, 30; Claimant's Exhibit 2; Employer's Exhibit 5. Employer does not challenge this aspect of the administrative law judge's weighing of the x-ray evidence. Employer's Brief at 12-14. Because the administrative law judge permissibly relied on the weight of the readings by Board-certified radiologists and B-readers in finding invocation of the interim presumption established, see *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990), we affirm his finding pursuant to Section 727.203(a)(1).<sup>4</sup>

Because the administrative law judge found the x-ray evidence sufficient to establish invocation at Section 727.203(a)(1), he properly declined to consider rebuttal at Section

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<sup>3</sup> We affirm as unchallenged on appeal the administrative law judge's finding regarding the entitlement date. See *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

<sup>4</sup> In light of our affirmance of the administrative law judge's finding pursuant to Section 727.203(a)(1), we need not address employer's contentions regarding Section 727.203(a)(4). Employer's Brief at 14-16.

727.203(b)(4). See *Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 11 BLR 2-1 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Curry v. Beatrice Pocahontas Coal Co.*, 18 BLR 1-59 (1994)(Brown and McGranery, JJ., concurring and dissenting, separately), *rev'd on other grounds*, 67 F.3d 517, 20 BLR 2-1 (4th Cir. 1995); *Buckley v. Director, OWCP*, 11 BLR 1-37 (1988). Since we have affirmed the administrative law judge's findings pursuant to Section 727.203(b)(1)-(3), and employer does not challenge the administrative law judge's finding regarding the date of entitlement, we affirm the award of benefits.

Accordingly, the administrative law judge's Decision and Order on Remand awarding benefits is affirmed.

SO ORDERED.

JAMES F. BROWN  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge