

FRANK TOMKO	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Helen Koschoff, Centralia, Pennsylvania, for Claimant.

Before: Dolder and McGranery, Administrative Appeals Judges, and Lawrence, Administrative Law Judge.\*

PER CURIAM:

Claimant appeals the Decision and Order (87-BLA-2918) of Administrative Law Judge Ainsworth H. Brown 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). Based on the date of filing, January 23, 1981, the administrative law judge adjudicated the claim pursuant to the permanent regulations found at 20 C.F.R. part 718 and concluded that claimant was entitled to benefits as of January 1, 1988. Neither party challenges claimant's entitlement to benefits, however, claimant challenges the

\*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (Supp. V 1987).  
administrative law judge's determination of the onset date of

total disability. On appeal claimant argues that he is entitled to an earlier onset date due to the administrative law judge's failure to properly consider all of the evidence of record. The Director, OWCP, has chosen not to respond in this matter.

The Board's scope of review is defined by statute. The administrative law judge's findings of fact and conclusions of law must be affirmed if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); O'Keefe v. Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965).

Once claimant's entitlement to benefits has been demonstrated, the date for commencement of those benefits is determined by the date of onset, *i.e.*, the month in which the occupational pneumoconiosis progressed to the stage of total disability. 20 C.F.R. §725.503; Rochester & Pittsburgh Coal Co. v. Krecota, 868 F.2d 600, 12 BLR 2-178 (3d Cir. 1989). Pursuant to 20 C.F.R. §725.503(b), if the date of onset is not ascertainable from all the relevant evidence of record, then benefits commence with the month during which the claim was filed.

In determining the onset date of claimant's total disability the administrative law judge relied on the January 1988 report by Dr. Karlavage. In so finding, the administrative law judge stated that the earlier medical evidence was insufficient to establish total disability. See Decision and Order at 7. The administrative law judge failed, however, to explain why this earlier evidence is insufficient.<sup>1</sup> Thus, with respect to onset, we remand this case in order for the administrative law judge to fully discuss all of the evidence relevant to this issue. See Krecota, supra; Williams, 13 BLR 1-28; Lykins, 12 BLR 1-181. See Brewster v. Director, OWCP, 7 BLR 1-120 (1984); Seese v. Keystone Coal Mining Corp., 6 BLR 1-149 (1983).

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<sup>1</sup> Claimant argues specifically that the administrative law judge failed to explain his rejection of Dr. Bruley's November 13, 1981 medical report, which may be sufficient to establish an earlier onset date. Further, it is noted that the November 17, 1986 medical report by Dr. Karlavage, which claimant refers to in his brief, does not appear to be in the record. See Director's Exhibit 21.



Accordingly, the administrative law judge's finding regarding onset is vacated and the case remanded to the administrative law judge so that he may fully consider all of the medical evidence pertaining to onset.

SO ORDERED.

NANCY S. DOLDER  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge

LEONARD N. LAWRENCE  
Administrative Law Judge