BRB No. 04-0175 BLA

JAMES H. PERRY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
DEL RIO, INCORPORATED	)	DATE ISSUED: 09/30/2004
	)	
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 on Remand Awarding Benefits of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

John E. Anderson (Cole, Cole & Anderson, PSC), Barbourville, Kentucky, for claimant.

Ronald E. Gilbertson (Bell, Boyd & Lloyd PLLC), Washington, D.C., for employer.

Michelle S. Gerdano (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals the Decision and Order on Remand Awarding Benefits (00-BLA-1066) of Administrative Law Judge Daniel F. Solomon rendered 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).[1] This case has previously been before the Board. In a Decision and Order dated January 24, 2002, Administrative Law Judge John C. Holmes credited the miner with seventeen years of coal mine employment and found that claimant, while working at the mine on September 4, 1996, suffered an injury to his back in a rock fall which caused him to stop work. Considering the medical evidence of record, the administrative law judge found the x-ray and biopsy evidence sufficient to establish that claimant has complicated pneumoconiosis arising out of coal mine employment, and, therefore, sufficient to invoke the irrebuttable presumption of total disability due to pneumoconiosis provided at 20 C.F.R. §718.304 (2000). *See* 30 U.S.C. §921(c)(3); 20 C.F.R. §718.203(b) (2000). Accordingly, benefits were awarded beginning May 1, 1998. The Board affirmed, as unchallenged on appeal, Judge Holmes' finding of seventeen years of coal mine employment and his finding at 20 C.F.R. §718.203(b). The Board further held, however, that Judge Holmes, in finding the evidence sufficient to invoke the irrebuttable presumption of total disability due to pneumoconiosis provided at 20 C.F.R §718.304, "failed to sufficiently discuss the evidence and his reasons for crediting it pursuant to the requirement of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a)." *Perry v. Del Rio, Inc.*, BRB No. 02-0382 BLA (Jan. 28, 2003), slip op. at 4. Specifically, the Board held that Judge Holmes failed to consider fully the qualifications of Drs. Wiot and Westerfield; failed to address the x-ray and CT scan readings which contained no finding of simple or complicated pneumoconiosis; mischaracterized Dr. Sargent's x-ray reading as showing complicated pneumoconiosis; failed to articulate sufficient reasons for discrediting the reports of Drs. Powell, Naeye, and Jarboe; failed to consider the relevance of the evidence as to whether claimant's blood vessels appeared damaged; and failed to characterize properly the opinion of Dr. Roberts. *Perry*, slip op. at 4-6. Accordingly, the Board vacated Judge Holmes' finding of invocation of the irrebuttable presumption provided at Section 718.304 and remanded the case to the administrative law judge to reconsider the evidence consistent with the standards set forth by the APA, and, as necessary, to reconsider either the onset date of complicated pneumoconiosis, or, alternatively, entitlement under 20 C.F.R. §§718.202 and 718.204.

In a Decision and Order on Remand dated September 30, 2003, Judge Solomon (the administrative law judge) found that the medical evidence of record was sufficient to invoke the irrebuttable presumption provided at Section 718.304, with a date of onset of June 12, 1998, and entitlement beginning June 1, 1998. Accordingly, the administrative law judge awarded benefits. On appeal, employer contends that the administrative law judge erred in finding the evidence sufficient to establish invocation of the irrebuttable presumption

[1] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

provided at Section 718.304, and further erred in his determination of the date of onset. Claimant responds, urging affirmance of the decision below. The Director, Office of Workers' Compensation Programs, responds to the employer's arguments regarding the date of onset, but does not otherwise address employer's arguments on appeal.

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 this 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes a finding of entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*). Section 718.304 provides an irrebuttable presumption that the miner is totally disabled due to pneumoconiosis. 20 C.F.R. §718.304(a)-(c); 30 U.S.C. §921(c)(3); *Gray v. SLC Coal Co.*, 176 F.3d 382, 21 BLR 2-615 (6th Cir. 1999); *see Director, OWCP v. Eastern Coal Corp.* [*Scarbro*], 220 F.3d 250, 256, 22 BLR 2-93, 2-100 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240 (4th Cir. 1999); *Lester v. Director, OWCP*, 993 F.2d 1143, 17 BLR 2-114 (4th Cir. 1993). The administrative law judge must weigh together the evidence at subsections 718.304(a), (b) and (c) before determining whether invocation of the irrebuttable presumption has been established. *Gray*, 176 F.3d at 389, 21 BLR at 2-629; *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991).

Employer initially asserts that the administrative law judge erred in relying on the biopsy evidence to support his decision to accord no weight to the early x-rays of record, taken in 1996 and 1997 by Drs. Johnstone, Gentry, Miller, Foster, Hoffnung, Estes, Hutchinson, and Whisnant, all of whom noted densities in the right lung but none of whom diagnosed pneumoconiosis. Employer's Brief at 6-8, 16, 17.

Employer's arguments lack merit. The administrative law judge, in his initial analysis of the evidence, focusing on the existence of simple pneumoconiosis, permissibly accorded greatest weight to the 1998 biopsy evidence as expressed in the reports of Drs. Roberts[2] and Ferguson.[3] The administrative law judge properly determined that the biopsy evidence was the most conclusive evidence as to the existence of pneumoconiosis, and found that it established at least the presence of simple pneumoconiosis. *See Gray*, 176 F.3d at 387, 21 BLR at 2-626; *Terlip v. Director, OWCP*, 8 BLR 1-363 (1985); *Fetterman v. Director, OWCP*, 7 BLR 1-688 (1985); Director's Exhibits 11, 13; Decision and Order at 50. The administrative law judge reasoned that the presence of pneumoconiosis established by biopsy in 1998, rendered incorrect the early 1996 and 1997 x-rays and CT scans by Drs. Johnstone, Gentry, Miller, Foster, Hoffnung, Estes, Hutchinson, and Whisnant, which noted densities in

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[2] Dr. Roberts performed claimant's thoracotomy, diagnosing benign fibrohistiocytosis. He stated:

> There were several good discrete nodules that were in the posterior aspect of the lower lobe and we were able to wedge these out… It was very hard, but we were also able to do a second biopsy of the upper lobe in a similar fashion and sent these for frozen section and then the larger confluence of masses in the upper lobe, we were able to do multiple true cut biopsies in this area. They all grossly appeared to be very hard anthracotic nodules. Frozen section diagnosis was consistent with benign fibrohistiocytosis and his lung certainly had an anthracotic appearance of coal miners disease.
> Director's Exhibit 14.

[3] Dr. Ferguson, a pathologist, examined the lung tissue specimens provided by Dr. Roberts, and noted:

> Specimen 1 consists of a 5 x 2.5 x 2 cm wedge of lung tissue. A stapled suture line is present. The pleura is smooth to wrinkled, dark purple. Sectioning reveals a 1.5 cm well circumscribed charcoal gray parenchymal nodule. Specimen 2 was taken from the upper lobe and consists of two slivers of black tissue which measures 0.5 x 0.2 cm together. Specimen 3 was taken from the lower lobe and consists of 1 cm red-black soft to firm tissue fragment exhibiting a 0.5 cm dark gray indurated nodule. Several staples are present. Microscopic diagnosis: Multiple fibrohistiocytic nodules associated with anthrasilicotic material consistent with coal workers' pneumoconiosis, all specimens. Although simple macules are not prominent in the lung parenchymal adjacent to the nodules there is extensive deposition of anthrasilicotic material including numerous silica crystals in the interstitium of the adjacent parenchyma. There is no evidence of neoplasm.
> Director's Exhibits 11, 13.

the lung but contain no diagnosis of pneumoconiosis. Therefore, we affirm as rational the administrative law judge's decision to accord greatest weight to the biopsy and operative reports of Drs. Roberts and Ferguson, and further hold that he permissibly found the early x-rays and CT scan readings outweighed by the more probative evidence.

Employer asserts that the administrative law judge did not offer a valid basis for discrediting the highly qualified opinions of Drs. Wiot and Sargent, who each opined that claimant does not have pneumoconiosis, and further erred in characterizing Drs. Wiot and Sargent as the only physicians to find that claimant did not have pneumoconiosis, when all of the early 1996 and 1997 x-rays and CT scan readings are also negative for pneumoconiosis. Employer's Brief at 9, 18-23.

Employer's arguments lack merit. The only report from Dr. Sargent consists of a December 28, 1999 reading of the November 12, 1999 x-ray, which he interpreted as showing no evidence of pneumoconiosis, but showing a well defined right upper lobe, "4+" centimeter opacity. Director's Exhibit 17. Dr. Sargent stated that neoplasm had to be ruled out, and that additional studies were needed. *Id*. Dr. Wiot re-read thirteen x-rays dating from September 4, 1996 to September 27, 1998 as either unreadable or showing no evidence of pneumoconiosis, and further provided a narrative report and deposition testimony following his review of the medical record and pathology reports, concluding that claimant did not have either simple or complicated pneumoconiosis. Director's Exhibits 29, 38. Contrary to employer's arguments, the administrative law judge recognized that Drs. Wiot and Sargent are dually qualified as Board-certified radiologists and B-readers, but properly stated that he was not required to give them determinative weight solely on the basis of their superior qualifications.[4] Decision and Order at 50. An administrative law judge may, in his or her discretion, assign more weight to a physician's report based on that physician's superior qualifications, but is not required to do so. *Gray*, 176 F.3d at 387, 21 BLR at 2-626; *Scott v. Mason Coal Co.*, 14 BLR 1-37 (1990)(*en banc recon*); *McMath v. Director, OWCP*, 12 BLR 1-6, 1-8 (1988); *Dillon v. Peabody Coal Co.*, 11 BLR at 1-113, 1-114 (1988); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24, 1-26 (1987); *Wetzel v. Director, OWCP*, 8 BLR 1-139, 1-141 (1985); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *DeFore v. Alabama By-Products Corp.*, 12 BLR 1-27 (1099). Further, in discussing the negative x-ray readings by Drs. Wiot and Sargent, the administrative law judge did not ignore the early x-rays and CT scan readings, but rather noted that "after all the evidence has been reviewed, Dr. Wiot and Dr. Sargent are the only readers who *now* fail to diagnose pneumoconiosis." [emphasis added] Decision and Order at 50. The administrative law judge permissibly determined that these opinions, that claimant does not have even simple pneumoconiosis, are contrary to the full weight of the evidence, including the opinions of several of employer's physicians who concede the presence of at

[4] The administrative law judge further properly noted that Dr. Ohriber is the only other dually qualified reader of record. Decision and Order at 50.

least simple pneumoconiosis, as established by biopsy. *Snorton v. Zeigler Coal Co.*, 9 BLR 1-106 (1986); *Terlip*, 8 BLR at 1-363; *Fetterman*, 7 BLR at 1-688; Decision and Order at 50. With respect to Dr. Wiot's opinion, the administrative law judge further stated that as his opinion, that claimant did not have complicated pneumoconiosis, is based in part on the faulty premise that he did not have simple pneumoconiosis, his opinion as to the existence of complicated pneumoconiosis is not credible. *See Clark*, 12 BLR at 1-149; *Snorton*, 9 BLR at 1-106; Decision and Order at 50. The administrative law judge permissibly discounted Dr. Sargent's x-ray reading based on the same premise. *Id*. While the administrative law judge also noted that Dr. Sargent's finding of a large opacity in the right lung was consistent with the readings of Drs. Westerfield, Ohriber, Powell, Hudson, and Broudy, who noted opacities in the same location, he did not mischaracterize Dr. Sargent's reading as supportive of a finding that claimant has complicated pneumoconiosis. Decision and Order at 51. Therefore, we reject employer's assertions of error and affirm the administrative law judge's discrediting of the opinions of Drs. Wiot and Sargent.

Employer further asserts that the administrative law judge failed to provide any valid reason for crediting the x-ray readings of Drs. Westerfield, Baron, or Ohriber as supportive of a finding of either simple or complicated pneumoconiosis. Employer's Brief at 17, 23. Contrary to employer's argument, a review of the administrative law judge's Decision and Order reveals that he permissibly credited those x-ray readings which were consistent with the biopsy evidence, which he determined was more probative of claimant's condition. *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); Decision and Order at 48-50.

Employer next contends that the administrative law judge erred in discrediting the opinions of Drs. Jarboe and Naeye, who found the biopsy evidence inconsistent with complicated pneumoconiosis. Employer's Brief at 25-28.

We disagree. The administrative law judge, in weighing Dr. Naeye's opinion, permissibly accorded it less weight in part because it was unclear whether Dr. Naeye had reviewed all of the appropriate material and pathological tissue slides. Director's Exhibit 27; Decision and Order at 53. Specifically, the administrative law judge noted that Dr. Naeye described only two lesions seen on CT scan, "a lesion in the lower part of claimant's right upper lung lobe and in the adjacent area of his right lower lung lobe," and further described the lung tissue as if it were one large lesion of 5 x 2.5 x 2 centimeters, where Dr. Ferguson, who conducted the biopsy, specifically described three specific lesions. *See Gruller v. Bethenergy Mines, Inc.*, 16 BLR 1-31 (1991); *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986); Decision and Order at 53. The administrative law judge also permissibly discounted Dr. Naeye's opinion regarding the significance of the undamaged blood vessels he saw, on the ground that it was unclear whether he had reviewed all the tissue slide material. *Stark*, 9 BLR 1-37; Decision and Order at 53. In addition, contrary to employer's arguments, the administrative law judge did not act as a medical expert in discounting Dr. Naeye's observations regarding claimant's blood vessels, but rather quoted Dr. Westerfield's relevant

opinion. Director's Exhibit 28; Decision and Order at 52, 53. In addition, with respect to Dr. Naeye's opinion that the lung tissue specimen did not represent complicated pneumoconiosis because "it has not arisen against the background of many obvious anthracotic macules and micronodules which indicate simple CWP long antedated its appearance," Director's Exhibit 27, the administrative law judge permissibly found this conclusion outweighed by the opinion of Dr. Roberts. Dr. Roberts operated on claimant and, therefore, the administrative law judge determined that he was in the best position to evaluate claimant's lungs. The administrative law judge also referred to the fact that Dr. Roberts noted multiple fibrohistiocytic nodules associated with anthracosilicotic material and consistent with coal workers' pneumoconiosis. The administrative law judge found that Dr. Naeye's opinion was also outweighed by the opinion of Dr. Ferguson, who performed the biopsy, and who also found the tissue specimen he examined to contain sufficient evidence to diagnose coal workers' pneumoconiosis. *See Gruller*, 16 BLR at 1-31; Decision and Order at 54. As the administrative law judge provided several valid reasons for according less weight to Dr. Naeye's report, we affirm the administrative law judge's weighing of it. S*earls*, 11 BLR at 1-164 n.5; *Kozele*, 6 BLR at 1-382 n.4.

With respect to the opinion of Dr. Jarboe, the administrative law judge noted that the physician opined that the biopsy results were inconsistent with complicated pneumoconiosis because the disease process had developed too rapidly. Employer's Exhibit 2; Decision and Order at 52. The administrative law judge could properly discount Dr. Jarboe's opinion because he found it based on the faulty premise that the early negative x-rays were credible and could be relied on to show the progression of disease. *See Clark*, 12 BLR at 1-149; Decision and Order at 52, 55. In addition, the administrative law judge noted that Dr. Westerfield explained in his deposition that the speed of progression of disease varies with the individual. Director's Exhibit 28 at 6, 8-10; Decision and Order at 52. The administrative law judge thereby provided a valid reason for according less weight to Dr. Jarboe's opinion. S*earls*, 11 BLR at 1-164 n.5; *Kozele*, 6 BLR at 1-382 n.4.

Employer also asserts that the administrative law judge mischaracterized Dr. Powell's opinion as unexplained and inconsistent, because Dr. Powell initially read the January 29, 1999 x-ray, taken during his physical examination of claimant, as positive for pneumoconiosis, type pq/t, 1/1 profusion, Category A, but later recanted his position that claimant had complicated pneumoconiosis after reviewing the opinion of Dr. Naeye. Employer's Brief at 24.

Employer's argument lacks merit. Dr. Powell testified, after reviewing the report of Dr. Naeye together with his own examination findings, that claimant does not have the usual massive progressive fibrosis associated with coal workers' pneumoconiosis. Director's Exhibit 27 at 8. However, Dr. Powell stated that he did not review the operative and biopsy reports themselves, only Dr. Naeye's interpretation of them. *Id.* at 9. In addition, on re-direct examination, Dr. Powell stated that because the lesion contained in the biopsy tissue

slides had already been removed at the time of the January 29, 1999 x-ray, the lesion he saw on this x-ray, which he felt represented complicated pneumoconiosis, was a different lesion from the one contained in the biopsy tissue slides. *Id.* at 13-14. The administrative law judge credited Dr. Powell's x-ray reading, but permissibly discredited his later deposition testimony largely because it was based on Dr. Naeye's discredited report. Decision and Order at 54. *Stark*, 9 BLR at 1-37; Decision and Order at 53-54. Moreover, Dr. Powell's testimony, that claimant did not have the usual massive progressive fibrosis associated with coal workers' pneumoconiosis, does not *per se* go against a finding that claimant has complicated pneumoconiosis, as employer argues, where Dr. Powell further stated that the lesions seen on the biopsy tissue slides and the lesions seen on x-ray were located in different parts of the lung. Director's Exhibit 27 at 13-14.

Similarly, employer asserts that the administrative law judge erred in crediting only a portion of Dr. Broudy's report, when in fact his entire report weighs against a finding that claimant has complicated pneumoconiosis. Employer's Brief at 8.

Employer's argument lacks merit. The administrative law judge properly credited Dr. Broudy's x-ray reading showing pneumoconiosis, 1/1, q/t, Category A, but discredited his opinion regarding the possible timing of the appearance of the lesion. Specifically, the administrative law judge permissibly found, under the circumstances of this case, that to consider Dr. Broudy's report supportive of a finding that claimant does not have complicated pneumoconiosis would necessitate acceptance of the premise that all of the early negative x-rays were correct, which, the administrative law judge found, goes against the weight of the more probative biopsy evidence. *See Snorton*, 9 BLR 1-106 (1986); *Terlip*, 8 BLR at 1-363; *Fetterman*, 7 BLR at 1-688.

Employer also asserts that the administrative law judge erred in finding the operative and biopsy reports of Drs. Roberts and Ferguson supportive of a finding that claimant has complicated pneumoconiosis, as neither physician diagnosed the condition. Employer's Brief at 8, 25; Director's Exhibits 11, 13. Contrary to employer's arguments, however, the administrative law judge did not find that these reports established that claimant has complicated pneumoconiosis. Rather, the administrative law judge rationally credited the findings of Drs. Roberts and Ferguson as to the existence of simple pneumoconiosis and relied on their reports for the descriptions of the sizes and appearance of the lesions seen by them in claimant's lungs. *See Gruller*, 16 BLR at 1-31; Decision and Order at 50, 54.

Employer further asserts that the administrative law judge erred in crediting the opinions of Drs. Baron and Hudson, whom employer asserts did not address claimant's 1996 chest injury. Employer's Brief at 29-30. Contrary to employer's arguments, the administrative law judge permissibly credited the opinion of Dr. Baron because in diagnosing complicated pneumoconiosis, he relied on the recent x-ray findings, the biopsy evidence, his

own testing and observations, and a review of the medical evidence of record. The administrative law judge noted that Dr. Baron, as claimant's treating physician, had the opportunity to evaluate claimant on numerous occasions and that his opinion was reasoned, documented and supported by the weight of the credible evidence. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, BLR (6th Cir. 2003); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 834 (6th Cir. 2002); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 n.6, 5 BLR 2-99, 2-103 n.6 (6th Cir. 1983); *Moseley v. Peabody Coal Co.*, 769 F.2d 357, 360, 8 BLR 2-22, 2-25 (6th Cir. 1985); Director's Exhibit 31; Decision and Order at 56-7. With respect to Dr. Hudson, who also diagnosed complicated pneumoconiosis, the administrative law judge also permissibly credited his report as consistent with the weight of the evidence as established by the recent x-rays and the probative medical opinion evidence. *Rowe*, 710 F.2d at 255 n.6, 5 BLR at 2-103 n.6; *Moseley*, 769 F.2d at 360, 8 BLR at 2-25; Director's Exhibit 14; Decision and Order at 57. We, therefore, affirm the administrative law judge's finding of invocation of the irrebuttable presumption provided at Section 718.304 as it is supported by substantial evidence.

Employer also challenges the administrative law judge's determination regarding the date of onset. The administrative law judge properly determined that claimant is entitled to benefits from the first month the evidence established that he suffered from complicated pneumoconiosis. 20 C.F.R. §725.503; *Williams v. Director, OWCP*, 13 BLR 1-28 (1989); Decision and Order at 57. The administrative law judge found that the first evidence that established the presence of complicated pneumoconiosis was the June 12, 1998 x-ray reading by Dr. Westerfield. Director's Exhibits 11, 12; Decision and Order at 57-58. The administrative law judge therefore found claimant entitled to benefits beginning June 1, 1998. Decision and Order at 58. Employer asserts that because the administrative law judge improperly weighed the medical evidence of record in finding that claimant has complicated pneumoconiosis, he cannot rely on Dr. Westerfield's June 12, 1998 diagnosis to establish the date of onset. As we have affirmed the administrative law judge's weighing of the medical evidence to find invocation of the irrebuttable presumption provided at Section 718.304, we further affirm the administrative law judge's reliance on Dr. Westerfield's June 12, 1998 x-ray report to establish the date of onset of claimant's complicated pneumoconiosis. We, therefore, affirm the administrative law judge's finding that claimant is entitled to benefits beginning June 1, 1998.

Accordingly, the administrative law judge Decision and Order on Remand Awarding Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge