U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 22-0010 BLA

HOMER R. PREECE (deceased)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
BILL MONT COAL COMPANY, INCORPORATED	)	
	)	
and	)	
	)	
KENTUCKY EMPLOYERS' MUTUAL INSURANCE	)	DATE ISSUED: 04/25/2023
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Jason A. Golden, Administrative Law Judge, United States Department of Labor.

Dennis James Keenan (Hinkle & Keenan P.S.C.), South Williamson, Kentucky, for Claimant.

W. Barry Lewis (Lewis and Lewis Law Offices), Hazard, Kentucky, for Employer and its Carrier.[1]

Olgamaris Fernandez (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Andrea J. Appel, Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: GRESH, Chief Administrative Appeals Judge, BUZZARD and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier appeal Administrative Law Judge (ALJ) Jason A. Golden's Decision and Order Awarding Benefits (2020-BLA-05244) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a subsequent claim filed on September 5, 2018.[2]

The ALJ found Bill Mont Coal Co., Inc. (Employer) is the responsible operator and Kentucky Employers' Mutual Insurance (KEMI) is the responsible carrier. Based on the parties' stipulation, he credited the Miner with twenty-eight years of underground coal mine employment and found he was totally disabled from a respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore found Claimant invoked the

[1] Employer and its Carrier were previously represented by Denise Hall Scarberry of Jones & Jones Law Office, PLLC, who filed their Petition for Review and Brief. After the briefing schedule in this appeal closed, but prior to a decision in the case, Jones & Jones filed a Motion to Withdraw as Counsel and Request an Extension of all Deadlines. Lewis and Lewis Law Offices subsequently entered its appearance as counsel for Employer and its Carrier. The Benefits Review Board grants Jones & Jones's request to withdraw but denies the request to extend the deadlines in this case as Employer and its Carrier filed a brief, the briefing schedule has long since closed, and Employer and its Carrier have not explained why an extension of the deadlines is necessary.

[2] The Miner filed three previous claims for benefits. Director's Exhibits 1-3. On July 17, 2017, ALJ Alan L. Bergstrom denied his prior claim because he did not establish any element of entitlement. Director's Exhibit 3. The Miner did not take any further action before filing his current claim. *Id.* He died on August 15, 2021. Sharon Preece, the Miner's widow, is pursuing the miner's claim on her husband's behalf. Thus, she is the claimant. *Preece v. Bill Mont Coal Co., Inc.*, BRB No. 22-0010 BLA (Mar. 9, 2022) (Order).

presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4), and established a change in an applicable condition of entitlement. 20 C.F.R. §725.309.[4] Further, he found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding it is the responsible operator. It also argues the ALJ erred in finding Claimant established total disability and thus invoked the Section 411(c)(4) presumption. Further, it challenges the commencement date for benefits.[5] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), filed a response, contending the ALJ properly determined Employer is responsible for the payment of benefits.

The Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[6] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

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[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled due to pneumoconiosis if he had at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[4] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless he finds "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.,* 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because the Miner's prior claim was denied for failure to establish any element of entitlement, Claimant had to establish one element of entitlement to obtain review of the merits of his current claim. *See White,* 23 BLR at 1-3; Director's Exhibit 3.

[5] We affirm, as unchallenged on appeal, ALJ Jason A. Golden's (the ALJ) finding that Claimant established twenty-eight years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3.

[6] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because the Miner performed his last coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 5-6; Hearing Tr. at 38-39.

Responsible Operator

The responsible operator is the "potentially liable operator, as determined in accordance with [20 C.F.R.] §725.494, that most recently employed the miner." 20 C.F.R. §725.495(a)(1). A coal mine operator is a "potentially liable operator" if it meets the criteria set forth at 20 C.F.R. §725.494(a)-(e).[7] Once the district director identifies a potentially liable operator, that operator may be relieved of liability only if it proves it is financially incapable of assuming liability for benefits, or another operator more recently employed the miner for a cumulative period of at least one year and is financially capable of assuming liability for benefits. *See* 20 C.F.R. §725.495(c).

Employer argues the ALJ erred in applying the law of the United States Court of Appeals for the Fourth Circuit, rather than the law of the United States Court of Appeals for the Sixth Circuit, as the Miner was last employed in Kentucky as opposed to West Virginia. Employer's Brief at 4-9. It further contends the ALJ erred in finding KWV Operations last employed the Miner for less than a year because his Social Security Administration (SSA) earnings records show he worked for KWV Operations for more than 125 days, which constitutes one year of coal mine employment under the Sixth Circuit's holding in *Shepherd v. Incoal, Inc.*, 915 F.3d 392, 402 (6th Cir. 2019).[8] *Id.* at 9-10. Thus Employer asserts it should be dismissed as the responsible operator. *Id.* We disagree.

[7] In order for a coal mine operator to meet the regulatory definition of a "potentially liable operator," the miner's disability or death must have arisen at least in part out of employment with the operator, the operator must have been in business after June 30, 1973, the operator must have employed the miner for a cumulative period of not less than one year, one working day of the employment must have occurred after December 31, 1969, and the operator must be financially capable of assuming liability for the payment of benefits, either through its own assets or through insurance. 20 C.F.R. §725.494(a)-(e).

[8] In *Shepherd v. Incoal, Inc.*, 915 F.3d 392, 401-02 (6th Cir. 2019), the United States Court of Appeals for the Sixth Circuit held a miner is entitled to credit for a full year of coal mine employment if he establishes 125 "working days" in a calendar year, "regardless of how long the miner actually was employed by the mining company in any one calendar year or partial periods totaling one year." A "working day" is "any day or part of a day for which a miner received pay for work as a miner, but shall not include any day for which the miner received pay while on an approved absence, such as vacation or sick leave." 20 C.F.R. §725.101(a)(32).

Employer has not alleged any specific error in, or identified any evidence contradicting, the ALJ's finding that the Miner started working for KWV Operations on April 2, 2007, and had no working days after he was injured on July 13, 2007, despite his SSA earnings records showing he continued to receive a salary from the company.[9] Decision and Order at 4-5; Director's Exhibit 3 at 449. Thus, we affirm the ALJ's finding that the Miner worked for KWV Operations from April 2, 2007 to July 13, 2007, or 103 working days, and thus it did not employ him for a cumulative period of one year or more. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 109 (1983); 20 C.F.R. §802.211(b); Decision and Order at 7-8. Further, because we affirm the ALJ's finding that the Miner worked for KWV Operations for less than 125 working days, we need not address Employer's argument that the ALJ should have applied Sixth Circuit law in determining the responsible operator. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *see generally Shepherd*, 915 F.3d at 402; Employer's Brief at 4-10.

We also reject Employer's argument that the ALJ erred in finding it failed to prove KEMI is not the responsible carrier. Employer's Brief at 10-13. The ALJ noted Employer submitted evidence purporting to show KEMI did not provide insurance coverage to it in July 1996, when the Miner last worked for the company.[10] Decision and Order at 10; Director's Exhibit 49. He also considered the Department of Labor's (DOL) evidence regarding KEMI's insurance coverage of Employer, and determined the DOL's "record does support the district director's conclusion about it having insurance with KEMI in July 1996." Decision and Order at 10-11; Director's Exhibit 1. Further, he stated that while Employer alleges KEMI did not provide coverage in July 1996, it "has provided no evidence explaining why [the DOL's] records reflect that KEMI insured [it] for federal black lung liability" as of that month, despite being obligated to provide the DOL with

[9] We note Employer is also bound by its stipulation in the Miner's prior claim that he stopped working as a miner on or about July 13, 2007, when he was injured. 20 C.F.R. §725.309(c)(5); Director's Exhibit 3 at 113-14.

[10] Employer submitted "Insurance Coverage Lookup & Notifications" screen printouts from the Kentucky Department of Worker's Claims showing Employer was insured by the following companies: WAUSAU from January 29, 1993 to January 29, 1996, with some overlapping coverage; Kentucky Employers' Mutual Insurance from January 29, 1996 to May 30, 1996; Reliance National Indemnity Insurance Company from May 29, 1996 with no cancellation date; Farmers Insurance Exchange from July 2, 1996 with no cancellation date; and National Union Fire Insurance from August 9, 1996 to March 9, 1997, with some overlapping coverage. Director's Exhibits 49 at 7-8, 58 at 8-9.

"information regarding policy issuances and cancelations in accordance with . . . specified time requirements." Decision and Order at 12. He thus concluded "there is no evidence that KEMI properly notified [the DOL] of any . . . cancelation, and thus, there is no evidence that such cancelation became legally effective before [the Miner's] last date of employment with Employer." Decision and Order at 12.

Although Employer argues the source of its evidence is unbiased and it should not be required to explain why the DOL's records show KEMI is the responsible carrier, it does not allege any specific error in the ALJ's finding that its evidence is insufficient to prove KEMI's insurance plan was cancelled, or KEMI was otherwise not providing coverage to Employer in July 1996. Decision and Order at 10-12; Employer's Brief at 10-13. Thus, we affirm the ALJ's finding that Employer failed to prove KEMI did not insure it on the last day the Miner worked for it in July 1996. *See Cox*, 791 F.2d at 446-47; *Sarf*, 10 BLR at 1-120-21; *Fish*, 6 BLR at 109; 20 C.F.R. §§725.495(c), 802.211(b); Decision and Order at 12. We therefore affirm, as supported by substantial evidence, the ALJ's finding that KEMI is the responsible carrier. Decision and Order at 12.

Moreover, we agree with the Director that Employer has waived its right to contest liability for payment of benefits in this claim. Director's Reply at 9-12. The Director correctly asserts Employer stipulated in the Miner's prior claim that it was the responsible operator liable for payment of benefits as his "most recent period of cumulative employment of not less than one year as a coal miner under [the Act] was with . . . Employer."[11] Director's Exhibit 2 (July 28, 2016 Hearing Tr. at 6-8) within Director's Exhibit 3. The regulations provide "any stipulation made by any party in connection with the prior claim will be binding on that party in the adjudication of the subsequent claim." 20 C.F.R. §725.309(c)(5); *see* 62 Fed. Reg. 3,337, 3,353 (Jan. 22, 1997). Thus, Employer's stipulation in the prior claim that it is liable for payment of benefits is binding in the current subsequent claim. 20 C.F.R. §725.309(c)(5).

[11] In a November 22, 2011 Operator Response to Notice of Claim, Employer accepted that it or its insurer is financially capable of assuming liability for the payment of benefits. Director's Exhibit 1 (Director's Exhibit 32-9 thru 32-12) within Director's Exhibit 3. While Employer denied that it is the responsible operator in the November 22, 2011 Operator Controversion because it was not the operator with whom the Miner had the most recent period of cumulative employment of one year, it stipulated that it is the responsible operator during the hearing that ALJ Bergstrom held on July 28, 2016. Director's Exhibit 1 (Director's Exhibit 32-9 thru 32-12) within Director's Exhibit 3; Director's Exhibit 2 (Hearing Tr. 6-8) within Director's Exhibit 3.

We therefore affirm the ALJ's determination that Employer is the responsible operator.

Total Disability

A miner was totally disabled if his pulmonary or respiratory impairment, standing alone, prevented him from performing his usual coal mine work and comparable gainful work. 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

The ALJ found Claimant established total disability based on the pulmonary function studies and the evidence as a whole.[12] 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 12-22.

Employer argues the ALJ erred in weighing the pulmonary function study evidence and the medical opinion evidence. Employer's Brief at 13-17.

Pulmonary Function Studies

The ALJ considered two pulmonary function studies dated April 23, 2019, and July 1, 2019. Decision and Order at 13-17. The April 23, 2019 study produced qualifying[13] results before the administration of bronchodilators, but non-qualifying results after, while the July 1, 2019 study produced non-qualifying results before and after the administration of bronchodilators. Director's Exhibits 12 at 9, 23 at 8. The ALJ found both studies valid and, because the July 1, 2019 study does not contain MVV results, the ALJ found it less probative of Claimant's condition than the April 23, 2019 study which includes MVV

[12] The ALJ found the arterial blood gas studies do not establish total disability, and there is no evidence the Miner had cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii), (iii); Decision and Order at 12, 17.

[13] A "qualifying" pulmonary function study or blood gas study yields values equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields values in excess of those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

results. He therefore gave the greatest weight to the April 23, 2019 study as a more comprehensive study. Decision and Order at 16. Thus, the ALJ found the pulmonary function study evidence established total disability. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 14-17.

Employer asserts the ALJ erred in discrediting Dr. Dahhan's opinion that the MVV portion of the April 23, 2019 pulmonary function study is invalid. Employer's Brief at 13-15. We disagree. At his deposition, Dr. Dahhan testified the April 23, 2019 study is valid. Employer's Exhibit 1 at 15-16. He was then asked whether he believes its MVV value is valid given the "indirect" MVV value was 70, but the "direct" MVV value was 54. *Id.* Dr. Dahhan answered:

> [O]ne of the parameters to assess validity is to compare the direct versus the indirect, and they need to match. If they don't match, suggest (sic) that there is poor performance for one reason or another. This individual had heart problem, had lung cancer, [and] had multiple surgeries. So, I would not be surprised to have that kind of discrepancy.

Id. He then opined the MVV result is invalid. *Id*.

The ALJ noted Dr. Dahhan did not identify a specific condition of the Miner as the cause of the alleged discrepancy which he opined would invalidate the MVV results. Decision and Order at 15. He permissibly found Dr. Dahhan's opinion – that he "would not be surprised to have that kind of discrepancy" in MVV values – entitled to "little" weight because the doctor "invalidated the MVV based on a speculative discrepancy he did not verify to exist, without specifically pointing to any problems with the testing itself." *Id*.; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). Further, he noted "[t]he technician who administered [the April 23, 2019 pulmonary function study] reported that [the Miner's] degree of cooperation and ability to understand instructions and follow directions were good." Decision and Order at 14 (citing Director's Exhibit 12 at 9). He permissibly found Dr. Dahhan did not adequately explain why his opinion regarding the validity of the MVV result of the April 23, 2019 study is "entitled to more weight than the impression of the technician" who had "first-hand observations" of the testing. *Id*. at 15; *see Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441.

We further reject Employer's argument that the ALJ erred in giving less weight to the July 1, 2019 pulmonary function study because it did not contain an MVV value. Employer's Brief at 13, 15. Contrary to Employer's argument, the ALJ permissibly found the April 23, 2019 study entitled to more probative weight than the July 1, 2019 study regarding the Miner's respiratory condition because it is "a more comprehensive study" as

"it contains FEV_1, FVC, FEV_1/FVC ratio, and MVV values."[14] *Hicks*, 138 F.3d at 533; Decision and Order at 16.

As it is supported by substantial evidence, we affirm the ALJ's finding that the pulmonary function study evidence establishes total disability. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g Greenwich Collieries v. Director, OWCP* [*Ondecko*], 990 F.2d 730 (3d Cir. 1993); 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 13-17.

Medical Opinions

The ALJ next considered the medical opinions of Drs. Alam and Dahhan. Decision and Order at 19-21. Dr. Alam opined the Miner was totally disabled based on the pulmonary function study results. Director's Exhibits 12, 31. Dr. Dahhan opined the Miner was not totally disabled because his pulmonary function and arterial blood gas studies are not qualifying. Director's Exhibit 23; Employer's Exhibit 1 at 20-21. The ALJ gave Dr. Alam's opinion little weight because the doctor relied, in part, on the non-qualifying July 1, 2019 blood gas study that the ALJ discredited and did not discuss the Miner's exertional requirements. Decision and Order at 20. Further, he discredited Dr. Dahhan's opinion as not well-reasoned or documented. *Id*. at 21. He thus found the medical opinion evidence does not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 21.

Employer argues the ALJ should have found Dr. Dahhan's opinion credible and sufficient to establish the Miner was not totally disabled. Employer's Brief at 15-17. Dr. Dahhan opined the Miner was not disabled because the April 23, 2019 pulmonary function study did not produce qualifying results. Employer's Exhibit 1 at 12-13, 16, 18, 20-21. He explained the Miner's predicted pulmonary function study values should have been lower than the values for a 71-year-old miner listed in the applicable tables contained in Appendix B of 20 C.F.R. Part 718 because lung function continues to decrease with age and the Miner was seventy-five years old when the studies were conducted. *Id.* Further, he opined the April 23, 2019 study would be qualifying if the Miner were seventy-one years old when it was administered, but not if he were seventy-five years old. *Id*.

[14] To the extent Employer argues the ALJ should have credited the July 1, 2019 pulmonary function study over the April 23, 2019 study because it is more recent, we disagree. Employer's Brief at 13, 15. An ALJ may not credit more recent non-qualifying tests, over earlier qualifying tests, solely on the basis of their recency. *See Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992).

Although an ALJ may use extrapolated values to determine a miner's disability when he is over the age of 71, the medical evidence must support the extrapolation. *See K.J.M.* [*Meade*] *v. Clinchfield Coal Co.*, 24 BLR 1-40, 1-47 (2008) (absent contrary probative evidence, the values for a 71-year-old miner listed in Appendix B of the regulations should be used to determine if miners over the age of 71 qualify as totally disabled). The ALJ permissibly found Dr. Dahhan's opinion not persuasive because he did not "provide specific values, calculations, or the formula he used" to determine the appropriate age-adjusted predicted values.[15] *See Hicks*, 138 F.3d at 532-34; Decision and Order at 21.

Thus, we affirm, as supported by substantial evidence, the ALJ's determination that the contrary medical opinion evidence does not undermine his finding that Claimant established total disability based on the pulmonary function study evidence. 20 C.F.R. §718.204(b)(2) (qualifying pulmonary function studies "shall establish" total disability "[i]n the absence of contrary probative evidence"); Decision and Order at 22. Because there is no evidence undermining the pulmonary function study evidence,[16] we further affirm the ALJ's finding that Claimant established total disability, 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232, and thus invoked the Section 411(c)(4) presumption, 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305, and established a change in an applicable condition of entitlement. 20 C.F.R. §725.309(c).

As Employer does not challenge the ALJ's finding that it did not rebut the presumption, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 22-30. We therefore affirm the ALJ's award of benefits.

Commencement Date

The date for the commencement of benefits is the month in which the Miner became totally disabled due to pneumoconiosis. 20 C.F.R. §725.503(b); *see Lykins v. Director, OWCP*, 12 BLR 1-181, 1-182 (1989). If the date is not ascertainable, benefits commence the month the claim was filed, unless credible evidence establishes the Miner was not

[15] As the ALJ gave valid reasons for discrediting Dr. Dahhan's opinion, we need not address Employer's other arguments regarding the ALJ's weighing of his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 15-17.

[16] The ALJ determined the non-qualifying arterial blood gas study evidence "does not contradict" the pulmonary function study evidence because they "measure different aspects of lung function." Decision and Order at 22; *see Sheranko v. Jones & Laughlin Steel Corp.*, 6 BLR 1-797, 1-798 (1984).

totally disabled due to pneumoconiosis at any subsequent time. 20 C.F.R. §725.503(b); *see Edmiston v. F&R Coal Co.*, 14 BLR 1-65, 1-69 (1990); *Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47 (1990).

The ALJ found the onset date of the Miner's total disability due to pneumoconiosis is not ascertainable from the record and thus awarded benefits commencing in September 2018, the month he filed his claim. Decision and Order at 31. Employer maintains benefits must commence after the non-qualifying July 1, 2019 pulmonary function study. Employer's Brief at 18. We disagree.

Contrary to Employer's argument, the ALJ did not credit the July 1, 2019 pulmonary function study or any evidence that the Miner was not totally disabled due to pneumoconiosis subsequent to the filing date of his claim. Rather, the ALJ credited the April 23, 2019 pulmonary function study in finding Claimant established total disability. Decision and Order at 16-17. The onset date is not established by the first medical evidence of record indicating total disability, as such evidence only shows the Miner became totally disabled at some earlier time. *See Owens*, 14 BLR at 1-50; *Merashoff v. Consolidation Coal Co.*, 8 BLR 1-105, 1-109 (1985). Since the medical evidence does not reflect the date the Miner became totally disabled due to pneumoconiosis, benefits are payable from the month in which he filed his claim. 20 C.F.R. §725.503(b). Therefore, we affirm the ALJ's conclusion that benefits commence in September 2018. *Owens*, 14 BLR at 1-49; Decision and Order at 31.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge