U.S. Department of Labor

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

BRB No. 19-0408 BLA

OSCAR BURLIN DAMRON	)	
	)	
Claimant	)	
	)	
v.	)	
	)	
SOUTH AKERS MINING COMPANY LLC	)	DATE ISSUED: 08/27/2020
	)	
and	)	
	)	
AMERICAN INTERNATIONAL/CHARTIS	)	
	)	
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 Larry A. Temin, Administrative Law Judge, United States Department of Labor.

Cameron Blair and John W. Beauchamp (Fogle Keller Walker, PLLC), Lexington, Kentucky, for Employer/Carrier.

Ann Marie Scarpino (Kate S. O'Scannlain, Solicitor of Labor; Barry H. Joyner, 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: BOGGS, Chief Administrative Appeals Judge, BUZZARD and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge Larry A. Temin's Decision and Order Awarding Benefits (2017-BLA-06182) rendered on a claim filed pursuant to the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2018) (Act). This case involves a subsequent miner's claim filed on June 29, 2011.[1]

The administrative law judge determined Claimant established the existence of complicated pneumoconiosis and invoked the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. Thus, he found Claimant established a change in an applicable condition of entitlement[2] and awarded benefits.

On appeal, Employer argues the administrative law judge lacked the authority to decide the case because he was not appointed in accordance with the Appointments Clause of the Constitution, Art. II § 2, cl. 2.[3] It also contends the district director, the Department

[1] This is Claimant's third claim for benefits. On October 27, 2008, the district director denied his initial claim, filed on April 9, 2008, because he did not establish total disability. Director's Exhibit 1. Claimant filed his second claim on May 4, 2010, and the district director denied it on January 11, 2011, as he again did not establish total disability. Director's Exhibit 2. Claimant took no further action until he filed the current subsequent claim on March 31, 2016. Director's Exhibit 4. On May 5, 2017, the district director issued a proposed decision and order denying benefits because, although Claimant established clinical and legal pneumoconiosis, he did not establish total disability. Director's Exhibit 35. Following Claimant's motion for reconsideration, the district director found the existence of complicated pneumoconiosis established and issued a June 9, 2017 revised decision awarding benefits. Director's Exhibits 40, 42.

[2] When a miner files a claim for benefits more than one year after the final denial of a previous claim, the administrative law judge must also deny the subsequent claim unless he finds that "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 Claimant's prior claim was denied because he failed to establish total disability, he had to submit new evidence establishing this element to have his case considered on the merits. 20 C.F.R. §725.309(c); Director's Exhibit 2.

[3] Article II, Section 2, Clause 2, sets forth the appointing powers:

of Labor (DOL) official who processes claims, is an inferior officer who was not appointed in a manner consistent with the Appointments Clause. On the merits, Employer contends the administrative law judge erred in finding Claimant established the existence of complicated pneumoconiosis. Claimant has not filed a response brief. The Director, Office of Workers' Compensation Programs (the Director), filed a limited response urging rejection of Employer's Appointments Clause challenges.

The Benefits Review Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[4] 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, 361-62 (1965).

Appointments Clause – Administrative Law Judge

On July 9, 2019, Employer filed a "Motion to Remand Proceeding for New Hearing or, in the Alternative, to Provide an Extension of Time in which to Submit Briefs" based on the Supreme Court's decision in *Lucia v. SEC*, 585 U.S. , 138 S.Ct. 2044 (2018).[5] In its motion, Employer only asserted the administrative law judge's issuance of the Notice

> [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. Art. II, § 2, cl. 2.

[4] We will apply the law of the United States Court of Appeals for the Sixth Circuit, as Claimant's last coal mine employment occurred in Kentucky. *See Shupe v. Director*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 7, 8, 10, 11; Hearing Transcript at 12; Decision and Order at 3.

[5] *Lucia* involved a challenge to the appointment of a Securities and Exchange Commission (SEC) administrative law judge. The United States Supreme Court held that, similar to Special Trial Judges at the United States Tax Court, SEC administrative law judges are "inferior officers" subject to the Appointments Clause. *Lucia v. SEC*, 585 U.S. , 138 S.Ct. 2044, 2055 (2018) (citing *Freytag v. Commissioner*, 501 U.S. 868 (1991)).

of Hearing prior to the ratification of his appointment on December 21, 2017 constituted an Appointments Clause violation. The Director responded, urging the Board to deny Employer's motion, and Employer replied. On September 16, 2019, the Board held Employer forfeited its opportunity to raise its Appointments Clause challenge before the Board because it did not properly raise the issue before the administrative law judge. *Damron v. South Akers Mining Co., LLC*, BRB No. 19-0408 BLA (Sept. 16, 2019) (Order) (unpub.). Employer subsequently filed a "Motion for Reconsideration to Vacate the [Board's] Order Dated September 16, 2019," and the Director responded. The Board granted Employer's motion, acknowledging it timely raised the Appointments Clause issue before the administrative law judge, but continued to deny its request to vacate and remand the administrative law judge's decision because prior to his ratification the administrative law judge issued only the Notice of Hearing. This would not be expected to color his subsequent consideration of the case and thus the Board held it "did not taint the adjudication with an Appointments Clause violation requiring remand." *Damron v. South Akers Mining Co., LLC*, BRB No. 19-0408 BLA (Dec. 30, 2019) (Order) (unpub.).

On appeal, Employer again argues *Lucia* precludes the administrative law judge from hearing this case because he took significant action prior to the ratification of his appointment. Employer's Brief at 9-10. As we previously rejected this contention, we decline to address it again. *See Damron v. South Akers Mining Co., LLC*, BRB No. 19-0408 BLA (Dec. 30, 2019) (Order) (unpub.).

Employer also asserts for the first time that the administrative law judge's appointment was not valid to start with and therefore could not be cured by the Secretary of Labor's ratification. Employer's Brief at 9; *citing Lucia*, 138 S.Ct. at 2055. Employer thus argues the Board must remand the case to a different administrative law judge for a new hearing. Employer's Brief at 10.

In response, the Director contends the administrative law judge had the authority to decide this case because the Secretary of Labor's ratification brought the appointment into compliance. Director's Brief at 9-11. She also maintains Employer failed to rebut the presumption of regularity that applies to the actions of public officers such as the Secretary. *Id*. at 10. We agree with the Director's position.

An appointment by the Secretary need only be "evidenced by an open, unequivocal act." Director's Brief at 10, *quoting Marbury v. Madison*, 5 U.S. 137, 157 (1803). Ratification is permissible so long as the agency head: 1) had the authority to take the action to be ratified at the time of ratification; 2) had full knowledge of the decision to be ratified; and 3) made a detached and considered affirmation of the earlier decision. *Wilkes-Barre Hosp. Co. v. NLRB*, 857 F.3d 364, 371 (D.C. Cir. 2017); *Advanced Disposal Servs. E., Inc. v. NLRB*, 820 F.3d 592, 603 (3d Cir. 2016); *CFPB v. Gordon*, 819 F.3d 1179, 1191 (9th

Cir. 2016). Under the "presumption of regularity," courts presume that public officers have properly discharged their official duties, with the burden on the challenger to demonstrate the contrary. *Advanced Disposal*, 820 F.3d at 603 (citing *Butler v. Principi*, 244 F.3d 1337, 1340 (Fed. Cir. 2001)).

Congress authorized the Secretary to appoint administrative law judges to hear and decide cases under the Act. 30 U.S.C. §932a; *see also* 5 U.S.C. §3105. Under the presumption of regularity, we therefore presume the Secretary had full knowledge of the decision to be ratified and made a detached and considered affirmation. *Advanced Disposal*, 820 F.3d at 603. Moreover, the Secretary did not generally ratify the appointment of all administrative law judges in a single letter. Rather, he specifically identified Judge Temin and gave "due consideration" to his appointment. Secretary's December 21, 2017 Letter to Administrative Law Judge Temin. The Secretary further acted in his "capacity as head of the Department of Labor" when ratifying the appointment of Judge Temin "as an Administrative Law Judge." *Id*.

Employer does not assert the Secretary had no "knowledge of all the material facts" or that he did not make a "detached and considered judgement" when he ratified Judge Temin's appointment.[6] Employer therefore has not overcome the presumption of regularity. *Advanced Disposal*, 820 F.3d at 603-04 (lack of detail in express ratification insufficient to overcome the presumption of regularity); *see also Butler*, 244 F.3d at 1340. The Secretary properly ratified the administrative law judge's appointment. *See Edmond v. United States*, 520 U.S. 651, 654-66 (1997) (appointment of civilian members of the United States Coast Guard Court of Criminal Appeals valid where Secretary of Transportation issued a memorandum "adopting" the General Counsel's assignments "as judicial appointments of my own"); *Advanced Disposal*, 820 F.3d at 604-05 (National Labor Relation Board's retroactive ratification appointment of a Regional Director with statement it "confirm[ed], adopt[ed], and ratif[ied] nunc pro tunc" its earlier invalid actions was proper). Consequently, we reject Employer's argument that this case should be remanded for a new hearing before a different administrative law judge.

[6] While Employer alleges the Secretary's ratification letter was "an 'auto-pen' action," Employer's Brief at 9, this fact does not render the appointment invalid. *See Nippon Steel Corp. v. Int'l Trade Comm'n*, 239 F. Supp. 2d 1367, 1373, 1375 n.14 (Ct. Int'l Trade 2002) (autopenned signing of the Recess Appointment Order satisfies the requirement that an appointment be evidenced by an "open and unequivocal act").

Appointments Clause – District Director

Employer argues for the first time in this appeal the district director lacked the authority to identify the responsible operator[7] and process this case because she is an "Inferior Officer" of the United States not properly appointed under the Appointments Clause. Employer again relies on *Lucia*. Employer's Brief at 10-13.

The Appointments Clause issue is "non-jurisdictional" and is subject to the doctrines of waiver and forfeiture. *See Lucia*, 138 S.Ct. at 2055 (requiring "a timely challenge to the constitutional validity of the appointment of an officer who adjudicates [a party's] case"); *Island Creek Coal Co. v. Wilkerson*, 910 F.3d 254, 256 (6th Cir. 2018) ("Appointments Clause challenges are not jurisdictional and thus are subject to ordinary principles of waiver and forfeiture."). *Lucia* was decided approximately eleven months prior to the administrative law judge's Decision and Order, but Employer failed to raise its challenge to the district director's appointment while the case was before the administrative law judge. At that time, the administrative law judge could have addressed Employer's arguments and, if appropriate, taken steps to have the case remanded - the remedy it seeks here. *See Kiyuna v. Matson Terminals, Inc.*, 53 BRBS 9, 10 (2019). Instead, Employer waited to raise the issue until after the administrative law judge issued an adverse decision. Based on these facts, we conclude Employer forfeited[8] its right to challenge the district director's appointment. Further, because Employer has not raised any basis for excusing its forfeiture, we see no reason to entertain its arguments. *See Powell v. Serv. Emps. Int'l, Inc.*, 53 BRBS 13, 15 (2019); *Kiyuna*, 53 BRBS at 11; *Glidden Co. v. Zdanok*, 370 U.S. 530, 535 (1962) (cautioning against resurrecting lapsed arguments because of the risk of sandbagging).

Entitlement to Benefits

Invocation of the Section 411(c)(3) Presumption – Complicated Pneumoconiosis

[7] While Employer alleges the district director lacked authority to identify the responsible operator, it does not contest the administrative law judge's finding that "Employer is the Responsible Operator in this case" and "presented no evidence that it was not the last coal mine operator to employ the Claimant and does not argue that it has not secured the payment of benefits." Decision and Order at 4.

[8] "[F]orfeiture is the failure to make the timely assertion of a right[;] waiver is the 'intentional relinquishment or abandonment of a known right.'" *Hamer v. Neighborhood Hous. Servs. of Chicago*, 583 U.S. , 138 S.Ct. 13, 17 n.1 (2017) (*quoting United States v. Olano*, 507 U.S. 725, 733 (1993)).

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), establishes an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if he suffers from a chronic dust disease of the lung which: a) when diagnosed by x-ray, yields one or more opacities greater than one centimeter in diameter that would be classified as category A, B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304. In determining whether Claimant has invoked the irrebuttable presumption, the administrative law judge must weigh together all evidence relevant to the presence or absence of complicated pneumoconiosis. 30 U.S.C. §923(b); *see Gray v. SLC Coal Co.*, 176 F.3d 382, 388-89 (6th Cir. 1999); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc).

The administrative law judge found the x-ray evidence inconclusive concerning complicated pneumoconiosis because the May 5, 2016 and October 21, 2016 x-rays had contrary readings by equally qualified physicians.[9] Decision and Order at 6, 9-10; *see* C.F.R. §718.304(a). He found there was no biopsy evidence for consideration at 20 C.F.R. §718.304(b) but concluded the computed tomography (CT) scans and medical opinion evidence established complicated pneumoconiosis at 20 C.F.R. §718.304(c). *Id*. at 9-13. Weighing all the evidence together, he concluded Claimant has complicated pneumoconiosis and invoked the irrebuttable presumption. *Id*. at 13. Employer contends the administrative law judge erred in weighing the evidence at 20 C.F.R. §718.304(c), and as a whole, to find Claimant established complicated pneumoconiosis. Employer's Brief at 14, 16-17. Employer's assertions are without merit.

Employer specifically argues the administrative law judge's conclusion the CT scan evidence supports a finding of complicated pneumoconiosis conflicts with his prior statement that the CT scan evidence "does not conclusively establish the existence of complicated pneumoconiosis, but also does not rule out a finding of such a diagnosis." Employer's Brief at 14-15, *quoting* Decision and Order at 11. Contrary to Employer's contention, the administrative law judge's statement referenced only the staff radiologist's interpretation of the June 28, 2016 scan based on the radiologist's notation that without

[9] The May 5, 2016 x-ray was interpreted as positive for simple and complicated pneumoconiosis by Dr. Crum, who is dually-qualified as a Board-certified radiologist and B reader, and as negative for complicated pneumoconiosis by Dr. Adcock, who is also dually-qualified. Director's Exhibits 14, 21. The October 21, 2016 x-ray was interpreted as positive for simple and complicated pneumoconiosis by Dr. Kendall, who is dually-qualified, and as negative for complicated pneumoconiosis by Dr. Adcock. Director's Exhibit 20; Employer's Exhibit 1.

prior imaging she could not distinguish whether the nodules were pneumoconiosis or malignancy.[10] Decision and Order at 10-11; Director's Exhibit 19. The administrative law judge's statement did not apply to the CT scan evidence as a whole.

The administrative law judge also considered the interpretations by Drs. Crum and Perkins, noting they evaluated both the June 28, 2016 and June 5, 2017 scans. Decision and Order at 11-12. Dr. Crum indicated the presence of multiple large opacities consistent with complicated pneumoconiosis category B while Dr. Perkins read the scans as consistent with sarcoidosis. Claimant's Exhibits 1-2; Employer's Exhibits 3-4. Both physicians concluded, however, the large opacities they observed did not represent malignancy or neoplasm because there was no change between the two scans.[11] Decision and Order at 11. The administrative law judge credited Dr. Crum's diagnosis as well reasoned.[12] *Id*. at 11-12; Claimant's Exhibits 1-2. In contrast, he gave less weight to Dr. Perkins's

[10] The staff radiologist observed "bilateral apical nodularity with too-numerous-to-count pulmonary nodules present with an upper lung zone predilection. Discrete nodules measure up to about 1.2 cm in size." Director's Exhibit 19. She indicated she could not "distinguish nodules related to pneumoconiosis from that of malignancy other than assessing for stability." *Id.*

[11] The administrative law judge mistakenly indicated Dr. Crum reviewed a June 18, 2016 CT scan, as opposed to a June 28, 2016 scan (Decision and Order p. 5) and referred to the June 5, 2017 scan as the June 5, 2016 scan (Decision and Order p. 11). The record contains interpretations of only two CT scans, dated June 28, 2016 and June 5, 2017; therefore, we attribute the discrepancies to scrivener's errors. *See* Director's Exhibit 19; Claimant's Exhibits 1-2; Employer's Exhibits 3-4.

[12] Employer asserts the administrative law judge speculated and abused his discretion when he stated, "I interpret Dr. Crum's statement that the findings were consistent with 'category B' complicated pneumoconiosis to mean that he would mark the box indicating the presence of B opacities on an ILO form." *See* Employer's Brief at 16, *quoting* Decision and Order at 11. In support, Employer contends, "Dr. Crum's evaluation of the May 5, 2015 x-ray did not indicate category B complicated pneumoconiosis." Employer's Brief at 16. Contrary to Employer's argument, the administrative law judge made that finding concerning Dr. Crum's interpretations of the June 5, 2017 CT scan. *See* Decision and Order at 9, 11-12; Director's Exhibit 4; Claimant's Exhibit 2. As the administrative law judge accurately noted, Dr. Crum identified category A opacities on the May 5, 2016 x-ray, and the equivalent of category B opacities on the June 5, 2017 CT scan. *Id*. Employer's reference is therefore inaccurate and fails to demonstrate the administrative law judge erred in analyzing the issue of complicated pneumoconiosis.

interpretations because Dr. Perkins did not adequately explain why his findings were atypical for pneumoconiosis or how he concluded Claimant has sarcoidosis. Decision and Order at 12; Employer's Exhibit 3-4. Employer has not challenged these findings, and we therefore affirm them. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Consequently, we further affirm the administrative law judge's determination the CT scan evidence supports a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(c); Decision and Order at 12.

Employer also contends the administrative law judge erred in weighing the medical opinion evidence. Employer's Brief at 15-17. The administrative law judge credited Dr. Alam's opinion diagnosing complicated pneumoconiosis, finding it to be well-reasoned and well-documented, and found Dr. Broudy's opinion did not sufficiently address whether Claimant has complicated pneumoconiosis. Decision and Order at 13-14; *see* Director's Exhibit 14; Employer's Exhibit 2.

Initially, we reject Employer's argument Dr. Alam's opinion does not specifically diagnose complicated pneumoconiosis. Employer's Brief at 15-16. Dr. Alam explicitly stated Claimant's "complicated [coal workers' pneumoconiosis] with 2/2 [x-ray reading] is bad enough to cause him total (sic) disabled." Director's Exhibit 14.

We also reject Employer's argument the administrative law judge erred in crediting Dr. Alam's opinion because it is based solely on Dr. Crum's May 5, 2016 positive x-ray interpretation which is contrary to the administrative law judge's finding the x-rays are in equipoise. Employer's Brief at 15-16; Director's Exhibit 14. While the administrative law judge found the x-rays considered in isolation are in equipoise, as discussed below, she subsequently gave greater weight to the positive x-ray readings when considering the evidence as a whole, a finding Employer does not challenge.

When weighing the evidence as a whole, the administrative law judge acknowledged "in isolation the chest x-ray interpretations are inconclusive" but explained the presence of large opacities in Claimant's upper lungs on all of the CT scans establish the existence of large opacities measuring over one centimeter and supports the positive x-ray interpretations. Decision and Order at 13. Thus, the administrative law judge rationally concluded Dr. Adcock's x-ray readings of no large opacities are not supported by the CT scan evidence, while the identification of large opacities on x-ray by Drs. Crum and Kendall is consistent with the CT scans.[13] *Gray*, 176 F.3d at 388-89; Decision and Order

[13] Given our affirmance of this finding, we reject Employer's contention "it is impossible to determine whether Dr. Alam's opinion would be different if he reviewed the subsequent chest x-ray reports from Dr. Adcock." Employer's Brief at 15.

at 13. Given the administrative law judge's conclusion that "all the radiographic evidence together" establishes the existence of complicated pneumoconiosis, Employer has not sufficiently explained how Dr. Alam's reliance on Dr. Crum's May 5, 2016 positive x-ray interpretation undermined his opinion. *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"); Decision and Order at 13.[14]

We also reject Employer's general assertion the administrative law judge disregarded Dr. Broudy's "thorough analysis." Employer's Brief at 15. Dr. Broudy conducted a review of records, including Dr. Crum's June 28, 2016 CT scan and Dr. Alam's report, both of which diagnosed complicated pneumoconiosis. Employer's Exhibit 2. As the administrative law judge found, however, in concluding Claimant "has radiographic changes suggestive of at least simple coal workers' pneumoconiosis[,]" Dr. Broudy did not conclusively state whether or not Claimant has complicated pneumoconiosis or address the evidence indicating he did.[15] Employer's Exhibit 1; *see* Decision and Order at 12-13. He thus rationally found Dr. Broudy's "opinion that the Claimant has 'at least' simple pneumoconiosis is insufficient to establish that he does not suffer from complicated pneumoconiosis as well." Decision and Order at 12.

Because the administrative law judge's finding of complicated pneumoconiosis is supported by his permissible finding that the CT evidence is positive for the disease and his weighing of the evidence as a whole, we affirm his finding Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304 and established a change in an applicable condition of entitlement at 20 C.F.R. §725.309. *See Gray*, 176 F.3d at 388-89; *White*, 23 BLR at 1-3; *Melnick*, 16 BLR at 1-33-34; Decision and Order at 8, 13-14. We further affirm, as unchallenged, the administrative law judge's finding Employer did not rebut the presumption Claimant's complicated pneumoconiosis arose out of his coal mine employment under 20 C.F.R. §718.203(b). *Skrack*, 6 BLR at 1-711; Decision and Order at 13-14. Thus, we affirm the administrative law judge's

[14] We note, however, that a physician's determination that is wholly reliant on an x-ray reading is merely a restatement of that reading, and has no independent weight. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576 (6th Cir. 2000); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-110 (1993); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Consequently, at worst for Claimant the physician opinion evidence would not detract from finding complicated pneumoconiosis.

[15] As these findings are uncontested, we affirm them**.** *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 12.

determination Claimant is entitled to benefits. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304; Decision and Order at 14.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge