U.S. Department of Labor

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

BRB No. 20-0080 BLA

RANDALL L. KOONTZ	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
S & H MINING, INCORPORATED	)	
	)	
and	)	
	)	
AMERICAN MINING INSURANCE COMPANY	)	DATE ISSUED: 01/29/2021
	)	
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 Dana Rosen, Administrative Law Judge, United States Department of Labor.

Catherine A. Karczmarczyk (Penn, Stuart & Eskridge), Johnson City, Tennessee, for Employer and its Carrier.

Julia C. Malette (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: BUZZARD, ROLFE and GRESH, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge Dana Rosen's Decision and Order Awarding Benefits (2018-BLA-06031) rendered on a claim filed on October 30, 2016, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The administrative law judge credited Claimant with 11.4 years of coal mine employment and thus found he could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[1] 30 U.S.C. §921(c)(4) (2018). Considering Claimant's entitlement under 20 C.F.R. Part 718, the administrative law judge found Claimant established legal pneumoconiosis in the form of obstructive lung disease significantly related to, or substantially aggravated by, coal mine dust exposure. 20 C.F.R. §718.202(a). He further found Claimant totally disabled due to the disease. 20 C.F.R. §718.204(b)(2), (c). Thus, he awarded benefits.

On appeal, Employer argues the administrative law judge lacked the authority to preside over the case because he was not appointed in a manner consistent with the Appointments Clause of the Constitution, Art. II § 2, cl. 2.[2] Alternatively, it contends he erred in excluding deposition testimony from Dr. Dahhan because Employer did not timely exchange it with the other parties. Employer also argues he erred in finding Claimant totally disabled by improperly weighing the pulmonary function studies and medical opinions of Drs. Forehand, Westerfield, and Dahhan. Claimant has not filed a response brief. The Director, Office of Workers' Compensation Programs (the Director), has filed

[1] Under Section 411(c)(4), Claimant is entitled to a rebuttable presumption that he is totally disabled due to pneumoconiosis if he establishes 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); 20 C.F.R. §718.305(b).

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

> [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.

a limited response, arguing the administrative law judge had the authority to decide the case. She also argues there is no merit to Employer's argument that the administrative law judge erred in weighing Dr. Forehand's opinion.

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.[3] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Appointments Clause

Employer urges the Board to vacate the award and remand the case to be heard by a different, constitutionally appointed administrative law judge pursuant to *Lucia v. SEC*, 585 U.S. , 138 S.Ct. 2044 (2018).[4] Employer's Brief at 5-7. It acknowledges the Secretary of Labor ratified the prior appointments of all sitting Department of Labor (DOL) administrative law judges on December 21, 2017, and does not argue that the administrative law judge took any action in this case prior to the ratification of his appointment, but maintains the ratification was insufficient to cure the constitutional defect in the administrative law judge's prior appointment.[5] *Id*.

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant's coal mine employment occurred in Tennessee. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 2; Hearing Transcript at 7.

[4] *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. Comm'r*, 501 U.S. 868 (1991)).

[5] The Secretary of Labor issued a letter to the administrative law judge on December 21, 2017, stating:

> In my capacity as head of the Department of Labor, and after due consideration, I hereby ratify the Department's prior appointment of you as an Administrative Law Judge. This letter is intended to address any claim that administrative proceedings pending before, or presided over by, administrative law judges of the U.S. Department of Labor violate the

We agree with the Director's position that Employer forfeited its Appointments Clause argument by failing to raise it when the case was before the administrative law judge. *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.") (citation omitted); Director's Brief at 4-5. *Lucia* was decided over six months before the case was assigned to the administrative law judge, over eleven months before the hearing in this case, and over sixteen months before the administrative law judge issued his Decision and Order. *Lucia*, 138 S.Ct. at 2044. Employer, however, failed to raise its argument while the claim was before the administrative law judge. At that time, he could have addressed Employer's arguments and, if appropriate, taken steps to have the case assigned for a new hearing before a different administrative law judge. *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. Because Employer has not raised any basis for excusing its forfeiture of the issue, we reject its argument that this case should be remanded to the Office of Administrative Law Judges (OALJ) for a new hearing before a different administrative law judge. *See Glidden Co. v. Zdanok*, 370 U.S. 530, 535 (1962) (cautioning against excusing forfeited arguments because of the risk of sandbagging); *Powell v. Serv. Emps. Int'l, Inc.*, 53 BRBS 13, 15 (2019).

Notwithstanding Employer's forfeiture, we conclude there is no merit to its argument that the Secretary of Labor's ratification was insufficient to cure the constitutional defect in the administrative law judge's prior appointment. Employer's Brief at 5-6. An appointment by the Secretary need only be "evidenced by an open, unequivocal act." *Marbury v. Madison*, 5 U.S. 137, 157 (1803). Ratification "can remedy a defect" arising from the appointment of an official when an agency head "has the power to conduct an independent evaluation of the merits [of the appointment] and does so." *Wilkes-Barre Hosp. Co. v. NLRB*, 857 F.3d 364, 371 (D.C. Cir. 2017) (internal quotations omitted); *see also McKinney v. Ozburn-Hessey Logistics, LLC*, 875 F.3d 333, 338 (6th Cir. 2017). It is permissible so long as the agency head: 1) had at the time of ratification the authority to take the action to be ratified; 2) had full knowledge of the decision to be ratified; and 3) made a detached and considered affirmation of the earlier decision. *Wilkes-Barre*, 857 F.3d at 372; *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 public officers have properly discharged their official duties,

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> Appointments Clause of the U.S. Constitution. This action is effective immediately.

Secretary's December 21, 2017 Letter to Administrative Law Judge Rosen.

with "the burden shifting to the attacker to show the contrary." *Advanced Disposal*, 820 F.3d at 603, *citing Butler v. Principi*, 244 F.3d 1337, 1340 (Fed. Cir. 2001).

Congress has 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. Thus, at the time of the ratification of the administrative law judge's appointment, the Secretary had the authority to take the action to be ratified. *Wilkes-Barre*, 857 F.3d at 372; *Advanced Disposal*, 820 F.3d at 603.

Under the presumption of regularity, it is presumed 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 Administrative Law Judge Rosen and gave "due consideration" to his appointment. Secretary's December 21, 2017 Letter to Administrative Law Judge Rosen. The Secretary further acted in his "capacity as head of the Department of Labor" when ratifying the appointment of Judge Rosen "as an Administrative Law Judge." *Id*. Having put forth no contrary evidence, Employer has not overcome the presumption of regularity. *Advanced Disposal*, 820 F.3d at 603-04 (mere lack of detail in express ratification is not sufficient to overcome the presumption of regularity); *see also Butler*, 244 F.3d at 1340.

Based on the foregoing, we hold the Secretary's action constituted a valid ratification of the appointment of the administrative law judge. *See Edmond v. United States*, 520 U.S. 651, 654-66 (1997) (appointment valid where the Secretary of Transportation issued a memorandum "adopting" assignments "as judicial appointments of [his] own"); *Advanced Disposal*, 820 F.3d at 604-05 (National Labor Relations Board's retroactive ratification of the appointment of a Regional Director with statement it "confirm[ed], adopt[ed], and ratif[ied] *nunc pro tunc*" all its earlier actions was proper).

Evidentiary Challenge

Employer argues the administrative law judge abused his discretion in excluding Dr. Dahhan's deposition testimony from the record. Employer's Brief at 7-13. We disagree.

An administrative law judge exercises broad discretion in resolving procedural and evidentiary matters. *See Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-63 (2004) (en banc); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-152 (1989) (en banc). Thus, a party seeking to overturn an administrative law judge's disposition of a procedural or evidentiary issue must establish that the administrative law judge's action represented an abuse of discretion. *See V.B.* [*Blake*] *v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009).

The administrative law judge issued a January 30, 2019 Notice of Hearing and Pre-Hearing Order setting June 11, 2019, as the hearing date in this case. January 30, 2019 Notice of Hearing. He also instructed the parties to complete discovery forty days prior to the hearing (May 2, 2019) and exchange evidence thirty days prior to the hearing (May 12, 2019). *Id*.

Employer filed a Motion for Relief from Discovery Deadlines on April 30, 2019. Employer's Exhibit 8. Although Employer had already submitted medical reports from Dr. Dahhan, it informed the administrative law judge it scheduled the doctor for a deposition on May 30, 2019, and thus requested leave to submit the transcript out of time. *Id*. Employer represented that Claimant and the Director did not oppose its motion. *Id*.

By Order dated May 1, 2019, the administrative law judge denied Employer's request. May 1, 2019 Order. He noted the district director transferred this case to the OALJ on June 22, 2018, and the OALJ assigned it to him on January 17, 2019. *Id*. He concluded Employer "had ample opportunity to develop its defenses, and obtain the testimony and reports from its medical experts," and thus it failed to establish good cause to extend any discovery deadlines. *Id*.

Employer nonetheless deposed Dr. Dahhan and exchanged the deposition with the other parties on June 4, 2019. Employer's Brief at 7-13. During the hearing, Employer moved to admit the deposition into the record notwithstanding the administrative law judge's prior Order. Hearing Transcript at 8-16. It argued it established good cause for the late exchange and submission of this evidence because Claimant exchanged his evidence designation form with Employer on May 24, 2019, within two weeks of the hearing. *Id*. at 11-16. Employer asserted it could not depose Dr. Dahhan before knowing the specific evidence Claimant would rely on as part of his affirmative case so that Dr. Dahhan could address this evidence. *Id*. Employer's argument did not persuade the administrative law judge and he excluded the deposition transcript. *Id*.

Employer first argues the administrative law judge erred in issuing a Notice of Hearing requiring the parties to exchange their evidence thirty days prior to the hearing rather than twenty days prior to the hearing pursuant to 20 C.F.R. §725.456(b)(2). Employer's Brief at 7-13. While Employer requested an extension of the Notice of Hearing deadline, it did not allege the administrative law judge lacks discretion to set a deadline that differs from 20 C.F.R. §725.456(b)(2) while the case was before him; it raises this argument for the first time on appeal. But we will not entertain an argument raised for the first time on appeal. *See Chaffin v. Peter Cave Coal Co*., 22 BLR 1-294, 1-298-99 (2003); *Kurcaba v. Consolidation Coal Co.*, 9 BLR 1-73, 1-75 (1986). Thus we conclude Employer forfeited this argument. *Zdanok*, 370 U.S. at 535,

Notwithstanding Employer's forfeiture, Employer did not comply with the regulation on which it relies. Section 725.456(b)(2) states that documentary evidence "may be received in evidence . . . if [it] is sent to all other parties at least twenty days before a hearing is held in connection with the claim." 20 C.F.R. §725.456(b)(2). Employer deposed Dr. Dahhan on May 30, 2019, and exchanged the deposition transcript with the Claimant and the Director on June 4, 2019. Hearing Transcript at 8-9. The twenty-day deadline in this case was May 22, 2019. Thus Employer did not comply with the regulatory requirement that it exchange Dr. Dahhan's deposition transcript with the other parties at least twenty days before the hearing, notwithstanding the deadlines the administrative law judge set in his Notice of Hearing. 20 C.F.R. §725.456(b)(2). In light of its failure to comply with the regulation, Employer has not established the administrative law judge abused his discretion in excluding the untimely exchanged deposition. *See Blake*, 24 BLR at 1-113.

Employer next argues the administrative law judge erred by failing to evaluate whether to admit the deposition in light of its representation that no other party opposed its request. Employer's Brief at 7-9; Employer's Exhibit 8. This argument has no merit. The administrative law judge has discretion to admit evidence not exchanged within the twenty-day time frame with the written consent of the parties or on the record at the hearing. 20 C.F.R. §725.456(b)(3). The record does not include any evidence that Claimant or the Director provided written consent or consented at the hearing. Employer's representation in its motion indicating the position of Claimant and the Director does not constitute consent in writing from either party. Moreover, neither Claimant nor the Director consented on the record at the hearing to admitting this evidence. To the contrary, the hearing transcript supports the opposite conclusion, as both indicated they did not object to the administrative law judge's *exclusion* of Dr. Dahhan's deposition from the record. Hearing Transcript at 10-11.

Notwithstanding Employer's argument, even if Claimant and the Director had consented, the applicable regulation does not mandate the administrative law judge admit the untimely exchanged evidence in light of that consent. Rather, the evidence "may be admitted at the hearing" upon the parties' consent. 20 C.F.R. §725.456(b)(3). Thus the administrative law judge still has discretion to exclude this evidence. In light of the foregoing, we reject Employer's argument that the administrative law judge abused his discretion by failing to address whether the other parties consented to admitting Dr. Dahhan's deposition into the record. 20 C.F.R. §725.456(b)(3); *Blake*, 24 BLR at 1-113.

We also reject Employer's argument that the administrative law judge was required to admit Dr. Dahhan's deposition because it notified the other parties of his deposition at least tendays prior to the hearing as 20 C.F.R. §725.457(a) requires. Employer's Brief at 9. This regulation states any "party who intends to present the testimony of an expert witness at a hearing, including any physician, regardless of whether the physician has

previously prepared a medical report, shall so notify all other parties to the claim at least [ten] days before the hearing." 20 C.F.R. §725.457(a). This language, however, "only applies to the appearance by an expert witness at the hearing. It does not apply to the introduction of deposition testimony at the hearing." *Tucker v. Eastern Coal Corp*., 6 BLR 1-743, 1-746 (1983).

Employer finally argues it established good cause for exchanging this evidence late due to the fact that Claimant designated his affirmative case evidence within twenty days of the hearing. 20 C.F.R. §725.414(a)(2)(i); Employer's Brief at 11-12. The only evidence Claimant designated, however, was Dr. Forehand's DOL-sponsored pulmonary evaluation of Claimant along with corresponding objective testing conducted during the examination, which was all admitted into evidence when the claim was before the district director. Claimant's Evidence Form; Director's Exhibit 21. The administrative law judge correctly noted Dr. Dahhan previously reviewed this medical evidence and responded to it in his April 8, 2019 medical opinion. Hearing Transcript at 13-14; Employer's Exhibit 1. Moreover, Employer's decision to schedule Dr. Dahhan's deposition for May 30, 2019, less than twenty days before the hearing, occurred long before Claimant's evidentiary designation. Employer's Exhibit 8. Employer proceeded to hold the deposition as scheduled despite the administrative law judge's explicit denial of its request to exchange it with the other parties after the May 12, 2019 deadline set in the Notice of Hearing. May 1, 2019 Order. Thus Employer has not established the administrative law judge abused his discretion in finding Employer failed to establish good cause for admitting Dr. Dahhan's deposition. 20 C.F.R. §725.456(b)(3); *Blake*, 24 BLR at 1-113; Hearing Transcript at 13-14.

In light of the foregoing, we affirm the administrative law judge's ruling excluding Dr. Dahhan's deposition from the record. *Dempsey*, 23 BLR at 1-63; Hearing Transcript at 8-16; May 1, 2019 Order.

Part 718 Entitlement

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Statutory presumptions may assist claimants in establishing the elements of entitlement if certain conditions are met, but failure to establish any of them precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Legal Pneumoconiosis

Employer does not challenge the administrative law judge's finding Claimant established legal pneumoconiosis[6] in the form of obstructive lung disease significantly related to, or substantially aggravated by, coal mine dust exposure. Decision and Order at 23-26. Thus we affirm this finding. 20 C.F.R. §718.202(a); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Total Disability

Employer argues the administrative law judge erred in finding Claimant totally disabled. Employer's Brief at 14-23. A miner is totally disabled if he has a pulmonary or respiratory impairment which, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 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,[7] or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must weigh all relevant supporting evidence against all relevant contrary evidence. *See 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). Qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2).

Employer argues the administrative law judge erred in weighing the pulmonary function study and medical opinion evidence. 20 C.F.R. §718.204(b)(2)(i), (iv); Decision and Order at 26-30, Employer's Brief at 14-23. It does not challenge, however, his finding Claimant established total disability based on the arterial blood gas studies. Decision and Order at 27. Thus we affirm his finding that the blood gas studies establish total disability. 20 C.F.R. §718.204(b)(2)(ii); *Skrack*, 6 BLR at 1-711; Decision and Order at 27.

With respect to the medical opinion evidence, the administrative law judge discredited the opinions of Drs. Westerfield and Dahhan that Claimant is not totally

[6] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). The definition includes "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

[7] The administrative law judge found Claimant did not establish total disability based on evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 27.

disabled because he found, in part, that both physicians failed to adequately address Claimant's arterial blood gas testing. Decision and Order at 28-30. He also found Dr. Westerfield equivocal on whether Claimant is totally disabled. *Id*. at 29-30. Employer does not challenge these credibility findings. Thus they are affirmed.[8] *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Skrack*, 6 BLR at 1-711.

We further affirm, as supported by substantial evidence, the administrative law judge's determination that the medical opinion evidence does not undermine the totally disabling results of the blood gas studies. Decision and Order at 30. Because there is no evidence undermining the qualifying arterial blood gas studies, we further affirm the administrative law judge's conclusion that the evidence, when weighed together, establishes total disability.[9] 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; Decision and Order at 30.

Disability Causation

Employer does not challenge the administrative law judge's finding that Claimant established he is totally disabled due to legal pneumoconiosis. 20 C.F.R. §718.204(c)(1); Decision and Order at 30-32. Thus we affirm this finding. *See Skrack*, 6 BLR at 1-711.

[8] Because the administrative law judge provided valid reasons for discrediting Drs. Westerfield and Dahhan's total disability opinions, we need not address Employer's arguments regarding the additional reasons the administrative law judge gave for rejecting their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Decision and Order at 28-30; Employer's Brief at 23-24.

[9] Employer argues the administrative law judge failed to weigh all the relevant pulmonary function studies, and erred in finding the April 1, 2019 pulmonary function study valid. 20 C.F.R. §718.204(b)(2)(i); Employer's Brief at 14-21. It also argues he erroneously credited Dr. Forehand's total disability diagnosis because the doctor conducted an "impartial" evaluation of Claimant. 20 C.F.R. §718.204(b)(2)(iv); Employer's Brief at 21-23. Because Claimant established total disability based on the arterial blood gas studies, any error by the administrative law judge in finding the pulmonary function studies and Dr. Forehand's opinion also establish total disability is harmless. *See Tussey v. Island Creek Coal Co*., 982 F.2d 1036, 1040-41 (6th Cir. 1993) (pulmonary function studies do not call into question valid and qualifying arterial blood gas studies because they measure different types of impairment); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

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

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge