DENNIS R. VARNEY )
)
      Claimant-Respondent )
)
  v. )
)
CHEYENNE EAGLE MINING COMPANY, ) DATE ISSUED: 02/07/2007
INCORPORATED )
)
      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 Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

Before: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand-Awarding Benefits (01-BLA-0538) of Administrative Law Judge Rudolf L. Jansen rendered on a claim 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). The Board previously affirmed that part of the administrative law judge's decision awarding benefits, but remanded the case for reconsideration of the date for commencement of benefits. The Board held that the administrative law judge did not provide an analysis of the medical evidence relevant to the date of onset of disability before ordering that benefits should be paid from the filing date, March 1, 1997. The Board instructed the administrative law judge to consider whether the original filing date or the date of claimant's request for modification be applied as the date benefits should commence pursuant to 20 C.F.R. §725.503. In particular, the Board directed that the administrative law judge determine whether the

medical evidence establishes the month claimant became totally disabled due to pneumoconiosis and, if the evidence failed to establish that date, to award benefits from December 2000, the month in which claimant filed his petition for modification. *Varney v. Cheyenne Eagle Mining Co., Inc.*, BRB No. 04-0187 BLA (July 22, 2004)(unpub.). On remand, the administrative law judge found that since the evidence of record failed to establish the month that claimant became totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §725.503, benefits would be awarded from the month in which claimant filed the petition for modification.  Accordingly, benefits were awarded as of December 2000.

On appeal, employer contends that it does not dispute the administrative law judge's new onset finding, but instead requests reconsideration of the Board's earlier decision on the merits.  Alternatively, employer notes that it raises its objections to the administrative law judge's earlier findings on the merits in order to preserve those objections on appeal.  Claimant and the Director, Office of Workers' Compensation Programs, do not participate in this 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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grills Associates, Inc.*, 380 U.S. 359 (1965).

Since employer concedes that it does not dispute the administrative law judge's new onset finding, that finding is affirmed.  *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).  Moreover, as the Board previously affirmed the administrative law judge's award of benefits and denied employer's request for reconsideration, we will not revisit employer's arguments concerning the award of benefits.  *See Williams v. Healy-Ball-Greenfield*, 22 BRBS 234 (1989)(Brown, J., dissenting); *Brinkley v. Peabody Coal Co.*, 14 BLR 1-147 (1990); *Bridges v. Director, OWCP*, 6 BLR 1-988 (1984).

Accordingly, the administrative law judge's Decision and Order on Remand-Awarding Benefits and awarding benefits commencing December 1, 2000, is affirmed.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge


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REGINA C. McGRANERY
Administrative Appeals Judge


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BETTY JEAN HALL
Administrative Appeals Judge