

BRB No. 03-0360 BLA

RICHARD D. BARNHART)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
CLINCHFIELD COAL COMPANY)	DATE ISSUED: 01/23/2004
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order Denying Request for Modification of Thomas M. Burke, Administrative Law Judge United States Department of Labor.

Richard D. Barnhart, Lebanon, Virginia, *pro se*.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

BEFORE: DOLDER, Chief Administrative Appeals Judge, McGRANERY and HALL, Administrative Appeals Judges

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order Denying Request for Modification (02-BLA-00217) of Administrative Law Judge Thomas M. Burke 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 Claimant was previously found, by Administrative Law Judge Pamela Lakes

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.

Wood, to have established entitlement to the irrebuttable presumption of totally disabling pneumoconiosis at 20 C.F.R. §718.304(a) and (c) by showing the existence of complicated pneumoconiosis. Judge Wood further determined that because the evidence was not clear as to the exact date of onset, benefits should begin on October 1, 1996, the first day of the month in which claimant filed his claim for benefits. Benefits were, accordingly awarded as of October 1, 1996. Subsequently, claimant moved that the onset date be modified to February 1, 1990, based on newly submitted evidence showing that as the month complicated pneumoconiosis was first manifest. After considering the x-ray and medical opinion evidence, however, the administrative law judge found that the evidence failed to establish an onset date prior to October 1, 1996. Accordingly, claimant's request for modification was denied.

On appeal, claimant generally challenges the administrative law judge's decision denying modification of the onset date. Employer responds, urging affirmance of the denial of modification. The Director, Office of Workers' Compensation Programs, the Director, is not participating in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a).

Considering the relevant evidence, the administrative law judge found that the onset date of complicated pneumoconiosis was not established before October 1996, the onset date previously determined by Judge Wood.² The administrative law judge found that the x-rays of June 11, 1990 and August 26, 1991 could not establish the onset date of complicated pneumoconiosis because they were read, on the one hand, as showing the existence of only simple pneumoconiosis and, on the other, as showing the existence of complicated pneumoconiosis, by equally credentialed readers. Likewise, the administrative law judge found the medical opinions and interpretations regarding the

² Although, the administrative law judge failed to address specifically the interpretations of an x-ray taken in February 1990, we deem this to be harmless error inasmuch as that x-ray, like the x-rays of June 11, 1990 and August 26, 1991, was read by dually-qualified readers as showing complicated pneumoconiosis, and by similarly credentialed readers as showing only simple pneumoconiosis. Director's Exhibits 25, 26, 27, 49; see *Barnhart v. Clinchfield Coal Co.*, BRB No. 00-0883 BLA (May 24, 2001)(unpub.).

June 11, 1990 CT scan were equivocal. Accordingly, the administrative law judge found that the evidence failed to establish an onset date of complicated pneumoconiosis prior to October 1, 1996, the date the claim was filed. This was rational. 20 C.F.R. §725.503(b); *Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47 (1990); *Lykins v. Director, OWCP*, 12 BLR 1-181 (1989); *Williams v. Director, OWCP*, 13 BLR 1-28 (1989); *Hall v. Consolidation Coal Co.*, 6 BLR 1-1306 (1984); *Truitt v. North American Coal Corp.*, 2 BLR 1-199 (1979), *aff'd sub nom. Director, OWCP v. North American Coal Corp.*, 626 F.2d 1137, 2 BLR 2-45 (3d Cir. 1980).

Accordingly, the administrative law judge's Decision and Order Denying Request for Modification is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge