BRB No. 08-0302 BLA

F.L.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ZEIGLER COAL COMPANY	)	
	)	
and	)	DATE ISSUED: 01/29/2009
	)	
ST. PAUL TRAVELERS INSURANCE COMPANY	)	
	)	
Employer/Surety-Petitioners	)	
	)	
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 of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Sandra M. Fogel (Culley & Wissore), Carbondale, Illinois, for claimant.

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

Jeffrey S. Goldberg (Carol A. DeDeo, Deputy Solicitor; Rae Ellen Frank James, Acting 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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.
PER CURIAM:

Employer/surety[1] (hereinafter, employer) appeals the Decision and Order on Remand (2001-BLA-00884) of Administrative Law Judge Pamela Lakes Wood (the administrative law judge) on a claim filed on January 14, 1980 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).[2] This case has been before the Board on several prior occasions.[3] Pursuant to the last appeal filed by employer on the merits, the Board affirmed the administrative law judge's findings that claimant[4] established forty years of coal mine employment, that claimant established invocation of the interim presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §727.203(a)(2) (2000),[5] and that employer did not establish rebuttal of the interim presumption pursuant to 20 C.F.R. §727.203(b)(1) (2000). The Board also held, as a matter of law, that the evidence did not establish rebuttal of the interim presumption pursuant to 20 C.F.R. §727.203(b)(2) (2000). However, the Board vacated the administrative law judge's finding that claimant established invocation of the interim presumption pursuant to 20 C.F.R. §727.203(a)(1) (2000),[6] and remanded the case for reconsideration of the x-ray

[1] By Order dated March 22, 2007, Administrative Law Judge Pamela Lakes Wood (the administrative law judge) granted surety's petition to intervene in this case. 2007 Order Granting Petition for Intervention and Denying Claimant's Motion to Reinstate Prior Orders at 1.

[2] 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, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[3] The full procedural history of this case is set forth in the following Board decisions: [*F.L.*] *v. Zeigler Coal Co.*, BRB No. 84-0249 BLA (Sept. 26, 1986)(unpub.); [*F.L.*] *v. Zeigler Coal Co.*, BRB No. 88-0458 BLA (Dec. 14, 1992)(unpub.); [*F.L.*] *v. Zeigler Coal Co.*, BRB No. 88-0458 BLA (Sept. 28, 1994)(unpub.); [*F.L.*] *v. Zeigler Coal Co.*, BRB No. 03-0840 BLA (Sept. 27, 2004)(unpub.); [*F.L.*] *v. Zeigler Coal Co.*, BRB No. 06-0305 BLA (Oct. 31, 2006)(unpub.).

[4] The miner's estate, which is represented by the miner's grandson, is pursuing this claim on behalf of the miner. The miner died on September 19, 2005.

[5] The regulations contained in 20 C.F.R. Part 727 (2000) were not affected by the 2001 amendments to the regulations.

[6] The Board addressed employer's assertion that the administrative law judge erred in weighing the x-ray evidence at 20 C.F.R. §727.203(a)(1) (2000), because the administrative law judge's finding that claimant established invocation of the interim presumption of total

evidence.[7] Further, the Board vacated the administrative law judge's findings that employer did not establish rebuttal of the interim presumption pursuant to 20 C.F.R. §727.203(b)(3), (4) (2000), and remanded the case for reconsideration of the evidence thereunder. [*F.L.*] *v. Zeigler Coal Co.*, BRB No. 03-0840 BLA (Sept. 27, 2004)(unpub.).

On remand, the administrative law judge found that claimant did not establish invocation of the interim presumption at 20 C.F.R. §727.203(a)(1) (2000). The administrative law judge also found that employer did not establish rebuttal of the interim presumption at 20 C.F.R. §727.203(b)(3), (4) (2000). Nonetheless, the administrative law judge found that claimant was entitled to benefits, based on her prior findings that claimant established invocation of the interim presumption at 20 C.F.R. §727.203(a)(2), (4) (2000) and employer did not establish rebuttal of the interim presumption at 20 C.F.R. §727.203(b)(1)-(4) (2000). Accordingly, the administrative law judge ordered benefits to commence as of January 1, 1980, the beginning of the month that the claim was filed.

On appeal, employer contends that the case should be dismissed for a lack of a proper party-in-interest to proceed with its adjudication. Employer also challenges the administrative law judge's weighing of the x-ray evidence at 20 C.F.R. §727.203(a)(1) (2000). Employer additionally challenges the administrative law judge's findings that employer did not establish rebuttal of the interim presumption at 20 C.F.R. §727.203(b)(3), (4) (2000). Lastly, employer contends that liability for the payment of benefits that are due between 1980 and 1987 should be transferred to the Black Lung Disability Trust Fund (Trust Fund).[8] Claimant responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has filed a limited response, urging the Board to reject employer's contention that liability for the payment of benefits from 1980 to 1987 should be transferred to the Trust Fund.

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

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disability due to pneumoconiosis under subsection (a)(1) (2000) affected her finding that employer did not establish rebuttal of the interim presumption under 20 C.F.R. §727.203(b)(4) (2000).

[7] The Board declined to address employer's assertions with regard to the administrative law judge's finding that claimant established invocation of the interim presumption at 20 C.F.R. §727.203(a)(4) (2000), in light of its affirmance of her finding that claimant established invocation of the interim presumption at 20 C.F.R. §727.203(a)(2) (2000).

[8] Employer filed a brief in reply to the briefs of claimant and the Director, Office of Workers' Compensation Programs, reiterating its prior contentions.

disturbed. 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 (1965).

Employer initially contends that the case should be dismissed for lack of a proper party-in-interest to proceed with its adjudication. Specifically, employer argues that the miner's grandson made no showing in writing that his rights to benefits could be prejudiced by a decision in the case, as required under 20 C.F.R. §725.360(b). In response, claimant argues that the miner's grandson has an interest in protecting the award of benefits because there were costs incurred by the miner in pursuing the claim, there could be outstanding benefits due to the miner's estate, and there could be a claim against the miner's estate for the overpayment of benefits. Claimant also argues that because Illinois law did not require probate of the miner's estate, the miner's grandson did not have letters of administration to submit to the administrative law judge.

By Order dated March 22, 2007, the administrative law judge denied employer's motion to dismiss the case because of the miner's death and the lack of authority by the miner's grandson to pursue the case on the miner's behalf. 2007 Order Granting Petition for Intervention and Denying Claimant's Motion to Reinstate Prior Orders at 1. The administrative law judge accepted the representations of claimant's counsel regarding the pursuit of the claim by the miner's estate. *Id*. at 1 n.2. Nonetheless, the administrative law judge advised claimant's counsel to provide her with a copy of the death certificate and the letters of administration that authorized the miner's grandson to represent the miner's estate. *Id*.

In the Decision and Order on Remand dated December 20, 2007, the administrative law judge noted that the documentation provided by claimant's counsel regarding the authority of the miner's grandson to pursue the case on behalf of the miner's estate consisted of a death certificate, an obituary, and a letter from a law firm that referenced a trust agreement that was not in the record.[9] 2007 Decision and Order on Remand at 7 n.5. Although the administrative law judge determined that this documentation was lacking in some respects regarding the authority of the miner's grandson to represent the miner's estate, she found that the miner's estate would remain the named party in the case. *Id*.

[9] In a letter dated April 2, 2007, John F. Clendenin, an estate attorney, advised claimant's counsel that there was no probate administration of the miner's estate because all of the miner's assets at the time of his death were held by his grandson as the trustee of a revocable living trust agreement. John F. Clendenin's April 2, 2007 Letter at 1. Mr. Clendenin also advised claimant's counsel that the miner's grandson was nominated as the executor of the miner's pour-over will. *Id*. Mr. Clendenin further indicated that because he did not have an executed or filed copy of the will in his file, the miner's grandson apparently had possession of it. *Id*.

An administrative law judge, as trier-of-fact, has broad discretion in dealing with procedural matters. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Because it was not unreasonable for the administrative law judge to find that the miner's estate qualified as a party to the claim, 20 C.F.R. §725.360, we reject employer's assertion that the case should be dismissed for a lack of a proper party-in-interest to proceed with its adjudication.

Turning to the merits of the case, employer contends that the administrative law judge erred in weighing the x-ray evidence at 20 C.F.R. §727.203(a)(1) (2000).[10] Employer specifically argues that the administrative law judge violated the Administrative Procedure Act (APA) by failing to provide a reason for not giving dispositive weight to Dr. Wiot's negative x-ray readings. The record consists of fifty interpretations of six x-rays dated March 10, 1980, September 14, 1981, September 24, 1996, October 24, 1997, September 8, 2000, and January 17, 2001. In the Decision and Order dated August 15, 2003, the administrative law judge considered the physicians' qualifications as B readers and Board-certified radiologists. The administrative law judge specifically stated:

> Of the twenty-five B-readers, seven interpreted the x-rays they reviewed as positive for pneumoconiosis while the others consistently gave negative readings, and the disagreement relates to all of the x-rays, except the first (1980) one. Moreover, for each x-ray, except for the first, two or more dually qualified B-readers, who possessed the additional qualification of [B]oard certification (sic) in radiology, read the x-ray as positive while two or more dually qualified readers read the same x-ray as negative.

2003 Decision and Order at 7. Based on the administrative law judge's determination that the most qualified readers disagreed in their interpretations of the x-rays, the administrative law judge found that the x-ray evidence was in equipoise. *Id*.

In its Decision and Order dated September 27, 2004, the Board noted Dr. Wiot's additional radiological qualifications. The Board specifically stated:

> Dr. Wiot testified [at his deposition] that he was a C reader prior to the implementation of the B reader program, that he developed the National

[10] Employer challenges the Board's prior affirmance of the administrative law judge's finding that claimant established invocation of the interim presumption at 20 C.F.R. §727.203(a)(2). [*F.L.*] *v. Zeigler Coal Co.*, BRB No. 03-0840 BLA, slip op. at 8. Because the Board's previous disposition of this issue at subsection (a)(2) (2000) constitutes the law of the case and we are not persuaded that the law of the case is inapplicable or that an exception to it has been demonstrated, we decline to revisit it. *Coleman v. Ramey Coal Co.*, 18 BLR 1-9 (1993); *Brinkley v. Peabody Coal Co.*, 14 BLR 1-147 (1990); *Bridges v. Director, OWCP*, 6 BLR 1-988 (1984).

> Institute of Occupational Safety and Health B reader program, that he taught the B reader course since its inception, and that he is currently revising the ILO system and organizing a new B reader course based on the new ILO system.

[*F.L.*] *v. Zeigler Coal Co.*, BRB No. 03-0840 BLA, slip op. at 10 (Sept. 27, 2004)(unpub.).

Although the Board determined that Dr. Wiot's additional qualifications did not require the administrative law judge to accord greater weight to Dr. Wiot's opinion, the Board held that the administrative law judge should consider Dr. Wiot's additional qualifications on remand because they could affect her finding that the x-ray evidence was in equipoise. *Id*. Consequently, the Board vacated the administrative law judge's finding that claimant did not establish invocation of the interim presumption at 20 C.F.R. §727.203(a)(1) (2000). The Board instructed the administrative law judge, on remand, to determine whether Dr. Wiot's additional qualifications affected her weighing of the x-ray evidence. *Id*.

In the Decision and Order on Remand dated December 20, 2007, the administrative law judge again found that the x-ray evidence was in equipoise, based on her determination that "the most qualified readers, who are dually qualified as B-readers and [B]oard-certified radiologists, disagree as to whether the [c]laimant had pneumoconiosis." 2007 Decision and Order on Remand at 9. The administrative law judge also found no valid basis to assign additional weight to Dr. Wiot's readings because of his participation in the C reader program and in the development of the B reader program.

Employer argues that the administrative law judge erred in failing to provide a valid explanation for declining to accord greater weight to Dr. Wiot's x-ray readings based on his additional radiological qualifications. As instructed by the Board, on remand, the administrative law judge considered Dr. Wiot's additional radiological qualifications in weighing the x-ray evidence at 20 C.F.R. §727.203(a)(1) (2000). Nonetheless, the administrative law judge declined to accord greater weight to Dr. Wiot's x-ray readings based on his additional radiological qualifications because she found no valid basis to do so. The administrative law judge stated:

> There is nothing in the record to establish that because of Dr. Wiot's participation in the now-defunct C-reader program or his involvement in developing the B-reader program that his x-ray interpretations are somehow entitled to deference, and a fair reading of Dr. Wiot's deposition does not reflect any such suggestion on his part. Moreover, I specifically reject that notion. As [c]laimant has remarked (Claimant's Brief on Third Remand at p.3), Dr. Wiot's involvement in the genesis of the B-reader program reflects good administrative skills as opposed to special qualifications in interpreting x-rays.

2007 Decision and Order on Remand at 9 (footnotes omitted). Further, citing *Harris v. Old Ben Coal Co.*, 23 BLR 1-98 (2006)(*en banc*)(McGranery and Hall, JJ., concurring and dissenting), the administrative law judge indicated that the Board did not require her to assign greater weight to Dr. Wiot's readings because of his academic qualifications and his involvement in the B reader program.

While an administrative law judge may rely on a reader's academic qualifications in radiology and his involvement in the B reader program as bases for according greater weight to the readings rendered by that reader, she is not required to do so. *Harris*, 23 BLR at 1-114; *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993). Because the administrative law judge acted within her discretion in considering Dr. Wiot's additional radiological qualifications, we reject employer's argument that the administrative law judge erred in failing to provide a valid explanation for declining to accord greater weight to Dr. Wiot's x-ray readings.

Employer also argues that the administrative law judge erred in failing to accord dispositive weight to Dr. Wiot's serial review of x-ray interpretations and CT scan interpretations. Contrary to employer's assertion, there is no requirement that an administrative law judge credit the readings of a doctor because he or she reviewed multiple x-rays. *J.V.S. v. Arch of West Virginia/Apogee Coal Co.*, 24 BLR 1-78, 1-90 n.13 (2008). Moreover, as the Board previously indicated, CT scan evidence is not relevant at 20 C.F.R. §727.203(a)(1) (2000). Thus, we reject employer's argument that the administrative law judge erred in failing to accord dispositive weight to Dr. Wiot's serial review of x-ray interpretations and CT scan interpretations.

Employer next contends that the administrative law judge erred in finding that employer did not establish rebuttal of the interim presumption at 20 C.F.R. §727.203(b)(3) (2000). In the Decision and Order dated August 15, 2003, the administrative law judge considered the opinions of Drs. Cohen, Tuteur, Renn, Repsher, and Dahhan. The administrative law judge initially discredited the opinions of Drs. Tuteur, Renn, Repsher, and Dahhan, which attributed the miner's impairment solely to sources other than coal mine employment, because "the medical opinions list various possible contributing factors without attempting to attribute significance to any one of them and without explaining how these factors played a part in causing [the miner's] disability." 2003 Decision and Order at 20. The administrative law judge also found that the opinions of Drs. Tuteur, Renn, Repsher, and Dahhan were either equivocal or essentially conclusory regarding the cause of the miner's disability. The administrative law judge then found that Dr. Cohen persuasively explained that the miner's partial response to bronchodilators and possible asthma did not rule out pneumoconiosis as a cause of the miner's respiratory disability. Further, the administrative law judge rejected Dr. Tuteur's opinion that no obstructive ventilatory impairment resulted from the miner's coal mine employment. Consequently, the administrative law judge found that employer did not establish rebuttal of the interim presumption at subsection (b)(3)

(2000).

In its Decision and Order dated September 27, 2004, the Board held that the administrative law judge failed to explain why she found that the opinions of Drs. Tuteur, Renn, Repsher, and Dahhan were either equivocal or essentially conclusory regarding the cause of the miner's disability. [*F.L.*] *v. Zeigler Coal Co.*, BRB No. 03-0840 BLA, slip op. at 13-14. The Board also held that the administrative law judge did not offer a rationale for rejecting Dr. Tuteur's opinion. [*F.L.*] *v. Zeigler Coal Co.*, BRB No. 03-0840 BLA, slip op. at 14. The Board, therefore, vacated the administrative law judge's finding that employer did not establish rebuttal of the interim presumption at 20 C.F.R. §727.203(b)(3) (2000), and remanded the case to the administrative law judge for further consideration of the evidence in accordance with the APA. *Id*. The Board also instructed the administrative law judge to consider Dr. Houser's opinion. *Id*. Further, the Board instructed the administrative law judge to focus on whether employer's physicians rationally ruled out pneumoconiosis as a cause of the miner's respiratory disability at subsection (b)(3) (2000). *Id*.

In the Decision and Order on Remand dated December 20, 2007, the administrative law judge considered the opinions of Drs. Stotler, Sanjabi, Tepper, Anderson, Eisenstein, Cohen, Houser, Tuteur, Renn, Repsher, and Dahhan. The administrative law judge initially found that the opinions of Drs. Tuteur, Renn, Repsher, and Dahhan were equivocal or essentially equivocal, and failed to provide a credible rationale for ruling out pneumoconiosis as a cause of the miner's disability. 2007 Decision and Order on Remand at 12. The administrative law judge next noted that her prior reasons for rejecting Dr. Tuteur's opinion were broader than the Board acknowledged in its decision. *Id*. at 15. As discussed, *supra*, the Board held that the administrative law judge failed to offer a rationale for rejecting Dr. Tuteur's opinion that the miner's ventilatory impairment did not result from his coal mine employment. [*F.L.*] *v. Zeigler Coal Co.*, BRB No. 03-0840 BLA, slip op. at 14. The administrative law judge, however, noted the reason that she gave for rejecting Dr. Tuteur's opinion. The administrative law judge stated:

> The Board is apparently referring to my statement that "I also reject the suggestion made by Dr. Tuteur that he can state within a reasonable [degree] of medical certainty that no obstructive ventilatory impairment resulted from the [c]laimant's 40 plus years of coal mine employment because obstruction so rarely results from coal mine dust exposure." My point there was that Dr. Tuteur was apparently relying upon a general statement that is arguably hostile to the Act to infer that the [c]laimant's obstructive disability was not caused by coal mine dust exposure rather than pointing to case-specific factors.

Id. 14-15.

The administrative law judge additionally indicated that her prior finding that rejected

Dr. Tuteur's discussion of the epidemiological evidence in favor of Dr. Cohen's discussion was unnecessary at subsection (b)(3) (2000), because the doctors' discussion related to the issue of pneumoconiosis[11] and claimant established invocation of the interim presumption of total disability due to pneumoconiosis. *Id*. at 15. Lastly, the administrative law judge found that none of the other medical opinions ruled out pneumoconiosis as a cause of the miner's disability.[12] The administrative law judge therefore found that employer did not establish rebuttal of the interim presumption at 20 C.F.R. §727.203(b)(3) (2000).

Employer argues that the administrative law judge held employer to an impermissible standard for establishing rebuttal of the interim presumption at subsection (b)(3) (2000). Contrary to employer's assertion, the administrative law judge properly applied the "rule out" standard in considering the medical opinion evidence at subsection (b)(3) (2000). The United States Court of Appeals for the Seventh Circuit, within whose jurisdiction this case arises, has held that in order to establish rebuttal of the interim presumption at subsection (b)(3) (2000), employer "'must demonstrate that the claimant's total disability was caused *entirely* by an impairment other than pneumoconiosis.'" *Amax Coal Co. v. Director, OWCP* [*Chubb*], 312 F.3d 882, 890, 22 BLR 2-514, 2-527 (7th Cir. 2002) (quoting *Zeigler Coal Co. v. Kelley*, 112 F.3d 839, 844, 21 BLR 2-92, 2-101 (7th Cir. 1997) (emphasis added). In other words, employer must "rule out" pneumoconiosis as a cause of the miner's disability to establish rebuttal of the interim presumption at subsection (b)(3) (2000). *Old Ben Coal Co. v. Director, OWCP* [*Mitchell*], 62 F.3d 1003, 19 BLR 2-245 (7th Cir. 1995); *Amax Coal Co. v. Beasley*, 957 F.2d 324, 16 BLR 2-45 (7th Cir. 1992). Because the administrative law judge weighed the medical opinion evidence at subsection (b)(3) (2000) in accordance with the "rule out" standard enunciated by the Seventh Circuit court, we reject employer's assertion that the administrative law judge erred in holding employer to an impermissible standard for establishing rebuttal of the interim presumption at subsection (b)(3) (2000). Further, because it is supported by substantial evidence, we affirm the administrative law judge's finding that employer did not establish rebuttal of the interim presumption at 20 C.F.R. §727.203(b)(3) (2000).

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[11] The administrative law judge noted that while Dr. Tuteur discounted the association between coal mine dust exposure, Dr. Cohen found that the studies supported such an association. 2007 Decision and Order on Remand at 15.

[12] The administrative law judge noted that Dr. Stotler's opinion that the miner was totally disabled due to arteriosclerotic heart disease was conclusory. 2007 Decision and Order on Remand at 15. The administrative law judge also noted that Drs. Sanjabi, Tepper, Anderson, and Eisenstein did not address the issue of disability causation. *Id*. The administrative law judge additionally noted that Dr. Houser opined that the miner's pulmonary impairment was related to coal worker's pneumoconiosis and coal dust exposure. *Id*. Further, the administrative law judge noted that Dr. Cohen opined that the miner's coal dust exposure was the primary cause of his pulmonary disability. *Id*.

Employer additionally contends that the administrative law judge erred in finding that employer did not establish rebuttal of the interim presumption at 20 C.F.R. §727.203(b)(4) (2000). The administrative law judge found that the x-ray evidence could not establish that the miner did not have clinical pneumoconiosis because she found that the x-ray evidence was in equipoise. 2007 Decision and Order on Remand at 16. The administrative law judge also found that the CT scan evidence did not establish that the miner did not have clinical pneumoconiosis. Consequently, the administrative law judge found that employer did not establish that the miner did not have clinical pneumoconiosis and, thus, did not establish rebuttal of the interim presumption at subsection (b)(4) (2000).

Employer asserts that the administrative law judge erred in requiring Dr. Wiot to have special qualifications or expertise in reading CT scans. The administrative law judge considered the negative CT scan interpretations of Drs. Wiot and Spitz. Contrary to employer's assertion, the administrative law judge reasonably found that the CT scan interpretations of Drs. Wiot and Spitz were not entitled to greater weight than the x-ray interpretations, based on the qualifications of these doctors. The administrative law judge stated that "Drs. Wiot and Spitz are both dually qualified as [B]oard-certified radiologists and B-readers; however, neither has been shown to have any special expertise as to the interpretation of CT scans apart from their general radiological qualifications." 2007 Decision and Order on Remand at 16. As discussed, *supra*, the x-ray reports were read by physicians who are B readers and Board-certified radiologists. Thus, we reject employer's argument that the administrative law judge erred in requiring Dr. Wiot to have special qualifications or expertise in reading CT scans.

Employer also argues that because Dr. Wiot was able to read the CT scan, the administrative law judge erred in assuming that its quality was not acceptable. The administrative law judge indicated that the January 17, 2001 CT scan that was interpreted by Drs. Wiot and Spitz was the same CT scan that Dr. Tuteur referred to as being of poor quality. The administrative law judge then noted that neither Dr. Wiot nor Dr. Spitz commented on the quality of the CT scan. An administrative law judge, as fact-finder, has broad discretion in assessing the evidence and determining whether a party has met its burden of proof. *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984). Moreover, the Board will not interfere with credibility determinations unless they are inherently incredible or patently unreasonable. *Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988); *Calfee v. Director, OWCP*, 8 BLR 1-7 (1985). Because it was not unreasonable for the administrative law judge to question the quality of the CT scan, we reject employer's assertion that the administrative law judge erred in assuming that Dr. Wiot's CT scan interpretation was not acceptable.

Employer further argues that the administrative law judge mischaracterized Dr. Wiot's testimony regarding the CT scan. Specifically, employer asserts that the administrative law

judge ignored Dr. Wiot's testimony that standards were not necessary for interpreting CT scans because they are not the subject of epidemiological studies. In addition to the narratives of Drs. Wiot and Spitz, the administrative law judge considered Dr. Wiot's deposition with regard to the CT scan. The administrative law judge characterized Dr. Wiot's testimony as interesting and "supportive of the theory that CT scans provide additional useful evidence." 2007 Decision and Order on Remand at 16. The administrative law judge also noted that "Dr. Wiot's discussion does not at any time suggest that qualified readers may not disagree upon the proper interpretation of the CT scans." *Id*. Further, the administrative law judge noted that "[Dr. Wiot] acknowledged that there are no ILO standards for the interpretation of CT scans." *Id*. The administrative law judge therefore found that, on balance, the CT scan evidence did not affect her weighing of the conflicting x-ray evidence. *Id*. The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because it was not unreasonable for the administrative law judge, in weighing together the x-ray and CT scan evidence at subsection (b)(4) (2000), to note that Dr. Wiot acknowledged that there were no ILO standards for the interpretation of CT scans, *Kuchwara*, 7 BLR at 1-170, we reject employer's assertion that the administrative law judge mischaracterized Dr. Wiot's testimony.

Employer also argues that the administrative law judge impermissibly substituted her opinion for that of the physicians by giving greater weight to Dr. Cohen's opinion than to the contrary medical opinions. The administrative law judge found that employer failed to establish that the miner did not have legal pneumoconiosis and, thereby, failed to establish rebuttal of the interim presumption at 20 C.F.R. §727.203(b)(4) (2000). In so finding, the administrative law judge noted that she discussed the relevant medical opinion evidence under subsection (b)(3) (2000) and in her prior decision. The administrative law judge then stated:

> As I did before, I continue to find Dr. Cohen's discussion of the epidemiological evidence relating to the association between obstructive ventilatory defects and coal mining to be most persuasive. Moreover, I find that the [e]mployer has failed to disprove a diagnosis of legal pneumoconiosis in the form of COPD or asthma caused or contributed to by coal mine dust.

2007 Decision and Order on Remand at 17.

The APA, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2), requires that an administrative law judge independently evaluate the evidence and provide an explanation for her findings of fact and conclusions of law. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). In this case, the administrative law judge failed to explain why she found that Dr. Cohen's opinion was the most persuasive. *McGinnis v. Freeman United Coal Mining Co.*, 10 BLR 1-4

(1987). Nonetheless, we hold that the administrative law judge's error in considering the medical opinion evidence with regard to the issue of legal pneumoconiosis was harmless, *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984), because our affirmance of the administrative law judge's finding that employer failed to establish that the miner did not have clinical pneumoconiosis precluded employer from establishing rebuttal of the interim presumption at subsection (b)(4) (2000). Thus, because it is supported by substantial evidence, we affirm the administrative law judge's finding that employer failed to establish rebuttal of the interim presumption at 20 C.F.R. §727.203(b)(4) (2000).

Employer finally contends that the administrative law judge erred in finding the onset date of disability to be January 1, 1980. Section 725.503 provides that "[w]here the evidence does not establish the month of onset, benefits shall be payable to such miner beginning with the month during which the claim was filed." 20 C.F.R. §725.503(b). The administrative law judge ordered benefits to commence as of January 1, 1980 because she was unable to determine, from the record, whether the miner's disability was manifested prior to October 1997. 2007 Decision and Order on Remand at 17.

Employer argues that the administrative law judge erred in failing to address the medical evidence that established the absence of total disability due to pneumoconiosis after the date that the claim was filed. Specifically, employer asserts that because the treatment records from 1982 to 2000 did not indicate that the miner had a chronic lung disease related to coal dust exposure, the administrative law judge should have inferred that the miner was not totally disabled due to pneumoconiosis during that period of time. Contrary to employer's assertion, the administrative law judge did not ignore relevant medical evidence regarding the onset date issue. If the medical evidence does not establish the date that the miner became totally disabled due to pneumoconiosis, an administrative law judge may determine that the miner is entitled to benefits as of the filing date of his claim, unless credible medical evidence indicates that the miner was not totally disabled at some point subsequent to the filing date of his claim. *Edmiston v. F&R Coal Co.*, 14 BLR 1-65 (1990); *see also Lykins v. Director, OWCP*, 12 BLR 1-181 (1989). In this case, the administrative law judge reasonably found that the medical evidence from 1981 to 1996 was "sparse and does not provide good data on the [miner's] degree of disability." 2007 Decision and Order on Remand at 17. Consequently, we reject employer's assertion that the administrative law judge erred in failing to address the medical evidence that established the absence of total disability due to pneumoconiosis after the date that the claim was filed.

Employer also argues that the administrative law judge erred in finding the onset date to be January 1, 1980 because the Seventh Circuit court held that the miner was not entitled to benefits subsequent to that date. Pursuant to an appeal by employer, the Seventh Circuit court, in a decision dated May 11, 1994, reversed Administrative Law Judge Samuel B. Groner's finding that claimant established invocation of the interim presumption at 20 C.F.R. §727.203(a)(1), and remanded the case for further findings before a different administrative

law judge. Director's Exhibit 40. The court stated:

> Although the [miner] has, as yet, failed to put forth substantial evidence demonstrating his entitlement to benefits, we believe he is entitled to pursue further testing, *i.e.*, ventilatory studies, blood gas studies and other diagnostic and pulmonary testing, so that he might be given an opportunity to establish the required standard of proof (substantial evidence) of his alleged pneumoconiosis.

Id.

In its 2004 Decision and Order, the Board rejected employer's assertion that the Seventh Circuit court's 1994 decision in this case required the administrative law judge to find that the date from which benefits commence had to be after that decision. [*F.L.*] *v. Zeigler Coal Co.*, BRB No. 03-0840 BLA, slip op. at 16. The Board explained that it was not inconsistent with the Seventh Circuit court's decision for the administrative law judge to have found the date from which benefits commence to be January 1980 because the court's decision did not establish that the miner was not disabled by pneumoconiosis in 1994. *Id*. The Board's previous disposition of this issue constitutes the law of the case. Employer does not argue that an exception to the law of the case doctrine applies in this case. Because we are not persuaded that the law of the case doctrine is inapplicable, or that an exception has been demonstrated, we need not revisit whether the administrative law judge's finding that benefits commence as of January 1, 1980 was inconsistent with the Seventh Circuit court's decision in this case. *Coleman v. Ramey Coal Co.*, 18 BLR 1-9 (1993); *Brinkley v. Peabody Coal Co.*, 14 BLR 1-147 (1990); *Bridges v. Director, OWCP*, 6 BLR 1-988 (1984).

Employer alternatively argues that because the case file was lost by the Department of Labor (the Department), the Trust Fund is liable for the payment of benefits from 1980 to 1997. Specifically, employer asserts that the Department deprived employer of a defense regarding the date that benefits should commence during the period of time that the case file was lost. In its 2004 Decision and Order on Remand, the Board noted that the case file was missing from September 28, 1994 until February 11, 2000. [*F.L.*] *v. Zeigler Coal Co.*, BRB No. 03-0840 BLA, slip op. at 17-18. The Board also noted that employer was timely notified of the claim, developed evidence, and participated in every stage of adjudication. *Id*. at 19. The Board additionally noted that no critical medical evidence was lost. The Board therefore rejected employer's assertions that the six-year delay caused by the Department's loss of the case file deprived employer of its right to due process, because the increase in the miner's age resulted in the deterioration of his lung capacity, and necessitated that liability for this case be transferred to the Trust Fund. *Id*.

In this case, as noted above, employer was timely notified of the claim, developed evidence, and participated in every stage of adjudication. We, therefore, hold that the delay

in the adjudication of the case by the Department did not preclude employer from mounting a meaningful defense with regard to the onset date. Consequently, under the facts of this case, we decline to transfer liability for the payment of benefits to the Trust Fund.

In view of the foregoing, we hold that the administrative law judge reasonably found that benefits in this case commence as of January 1, 1980, the beginning of the month that the claim was filed. 20 C.F.R. §725.503(b).

Accordingly, the administrative law judge's Decision and Order on Remand awarding benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge