BRB No. 09-0307 BLA

DEBRA WILMETH	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	DATE ISSUED: 01/29/2010
	)	
BLUE MOUNTAIN ENERGY	)	
	)	
and	)	
	)	
OLD REPUBLIC INSURANCE COMPANY	)	
	)	
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 Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Martin J. Linnet (Wilderman and Linnet P.C.), Denver, Colorado, for claimant.

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

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order - Awarding Benefits (2005-BLA-05837) of Administrative Law Judge Donald W. Mosser on a miner's claim filed on December 5, 2003, 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

administrative law judge credited claimant with twenty years of coal mine employment, and adjudicated this claim pursuant to 20 C.F.R. Part 718. The administrative law judge found that the evidence was sufficient to establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), and that claimant is totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in weighing the conflicting medical opinions as to the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Employer asserts that the administrative law judge improperly shifted the burden to employer to prove that claimant's chronic obstructive pulmonary disease (COPD) was not caused by coal dust exposure. Employer specifically contends that the administrative law judge erred in crediting the opinion of claimant's treating physician, Dr. Rose, that claimant has COPD due, in part, to coal dust exposure, over the opinions of Drs. Farney and Repsher, that claimant's COPD is due to smoking. Employer further asserts that the administrative law judge erred in finding that claimant is totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). In addition, employer contends that the administrative law judge erred in finding that claimant is entitled to benefits commencing December 2003, the month in which she filed her claim. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.[1] Employer has filed a reply brief, reiterating its contentions on appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence and in accordance with applicable law.[2] 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

[1] We affirm, as unchallenged by the parties on appeal, the administrative law judge's findings of twenty years of coal mine employment, that claimant did not establish the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), but that the evidence was sufficient to establish total disability under 20 C.F.R. §718.204(b)(2)(iv). *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Tenth Circuit, as claimant's coal mine employment was in Colorado. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*); Director's Exhibit 10.

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that she suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, that she is totally disabled and that her disability is due to pneumoconiosis. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes a finding of entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

I. Legal Pneumoconiosis

The administrative law judge considered the medical opinions of Drs. Shockey, Repsher, Farney and Rose pursuant to 20 C.F.R. §718.202(a)(4). Claimant was examined by Dr. Shockey on January 9, 2004, at the request of the Department of Labor. Director's Exhibit 10. Dr. Shockey did not record the miner's specific length of coal mine employment, but attached a copy of claimant's work history on Form CM-911, which reflected coal mine employment from 1981 to 2003. *Id*. Dr. Shockey also reported a smoking history of one pack of cigarettes a day for thirty-six years. *Id*. He diagnosed COPD based on his physical examination, chest x-ray and the results of a pulmonary function study (PFS). *Id*. He also diagnosed coal workers' pneumoconiosis (CWP) based on claimant's history of coal dust exposure, chest x-ray, and PFS. *Id*. Dr. Shockey indicated that claimant was totally disabled, and attributed fifty percent of the disability to her COPD and fifty percent to her CWP. *Id*.

Dr. Repsher examined claimant on June 14, 2004, and also reviewed the report of Dr. Shockey. Director's Exhibit 18. Dr. Repsher noted that claimant worked as a coal miner for twenty-six years and began smoking cigarettes at the age of fifteen, quitting in 2000. *Id*. He reported that an x-ray was negative for CWP, the PFS showed "moderate COPD without a significant immediate bronchodilator response," and a blood gas study (BGS) showed moderate arterial hypoxemia. *Id*. Dr. Repsher opined that claimant suffered from "pure COPD," unrelated to coal dust exposure because CWP "when clinically significant, is primarily a restrictive disease that may have some obstructive features." *Id*. Dr. Repsher further noted that CWP typically causes *hypocarbi*c hypoxemia on BGS, but he described claimant's BGS as showing *hypercarbic* hypoxemia, which he opined was "probably" due to mild to moderate COPD. *Id*.

Dr. Farney examined claimant on November 23, 2004, and reviewed the reports of Drs. Shockey and Repsher. Director's Exhibit 21. He noted a twenty-three year history of coal mine employment. *Id*. He opined that a PFS showed mild to moderate obstructive airways disease with a mild reversible component, and that claimant demonstrated a reduction in diffusion capacity consistent with emphysema. *Id*. He attributed claimant's COPD to smoking, noting that "[w]hile it is possible that heavy exposure to coal dust for many years may also lead to COPD, the exposure history [of

twenty-three years] is relatively modest in contrast to a [thirty-five] pack-year cigarette smoking history." *Id*. He further noted that the x-ray was negative for CWP. According to Dr. Farney, claimant is totally disabled based on her marked hypoxemia with exercise and her need for oxygen therapy. *Id*.

In his deposition, Dr. Farney testified that the number one cause of COPD in the United States is cigarette smoke exposure, as recent studies have shown that at least twenty-five percent of smokers develop COPD. Employer's Exhibit 21 at 12-14. He testified that claimant's smoking history is highly significant for the development of COPD. *Id*. at 12. He also noted that claimant has a significant history of gastroesophageal reflux disorder, which is also a potential risk factor for the development of COPD. According to Dr. Farney, the PFS showed moderate obstructive airways disease with a suggestion of a bronchodilator response and mild reduction of the diffusion capacity, which are "classic findings of somebody who has a COPD due to cigarette smoking with an element of emphysema." *Id*. at 38-39.

Dr. Rose examined claimant on November 8, 2005, at which time she took a complete medical history, obtained a chest x-ray and a PFS. Claimant's Exhibit 1. In addition, Dr. Rose reviewed the reports and objective tests done by Drs. Farney, Repsher, and Shockey. *Id*. In her report dated November 8, 2005, Dr. Rose diagnosed CWP, citing claimant's twenty-five years of coal mine employment and symptoms of exertional dyspnea and cough, along with a PFS that showed "significant non-reversible airways obstruction and decreased diffusion capacity." *Id*. She also reported that an x-ray showed "clear findings of upper lobe emphysema." *Id*. Under "Impression," Dr. Rose wrote, "hypoxemia and pulmonary hypertension, likely due to CWP/Black Lung/COPD." *Id*. According to Dr. Rose, claimant's smoking history "likely contributed to the COPD" but she also attributed claimant's respiratory condition to coal dust exposure and explained:

> There is extensive medical literature showing the causal link between coal mine dust exposure and risk for emphysema/COPD. While [claimant's] previous smoking history likely also contributes to her COPD, this does not obviate the fact that she has total respiratory disability due to coal workers' pneumoconiosis. Her clinical findings clearly meet the federal definition for legal pneumoconiosis.

Id. In a deposition conducted on September 11, 2007, Dr. Rose was asked to clarity if her opinion, as to the etiology of claimant's COPD, would change if claimant had twenty-two and not twenty-five years of coal mine employment, as she reported. Dr. Rose indicated that her opinion would remain the same, that claimant's COPD was due, in part, to coal dust exposure. Claimant's Exhibit 14 at 20-21.

At the October 18, 2007 hearing, Dr. Repsher testified that, subsequent to his examination, he was provided with a copy of the Director's Exhibits, Dr. Rose's deposition, claimant's evidentiary submissions, and the hospitalization and treatment records. Hearing Transcript at 89. Dr. Repsher reiterated his opinion that, while coal dust exposure does cause some obstruction, it does not cause significant obstruction. *Id*. at 92-96. Citing medical studies, he explained that "[y]ou can show a statistically significant presence of COPD, but not a clinically significant presence of COPD" in coal miners. *Id*. at 93. Dr. Repsher also testified that cigarette smoking causes catastrophic COPD in thirteen percent of smokers, and described claimant as a "sensitive cigarette smoker." *Id*. at 96. Dr. Repsher again concluded that claimant's COPD was due to smoking and not coal dust exposure. *Id*.

In weighing the conflicting medical opinions pursuant to 20 C.F.R §718.202(a)(4), the administrative law judge assigned "little probative weight" to the legal pneumoconiosis diagnosis of Dr. Shockey because "he understated claimant's smoking history." Decision and Order at 19. The administrative law judge rejected the opinions of Drs. Repsher and Farney, that claimant's COPD is due entirely to smoking, because the administrative law judge found that they failed to adequately explain why claimant's coal dust exposure was not also a contributing factor to her COPD. *Id*. at 19. The administrative law judge found Dr. Rose's opinion to be reasoned and documented, and entitled to controlling weight based on her qualifications. *Id*. at 18-19. Employer maintains that the administrative law judge applied an incorrect standard in evaluating the medical opinions pursuant to 20 C.F.R. §718.202(a)(4), and erred in shifting the burden to employer to prove that claimant's respiratory condition is not related to her coal mine employment.[3] We reject employer's assertions of error as they are without merit.

The administrative law judge permissibly gave less weight to Dr. Repsher's opinion because he found that it was not sufficiently reasoned. As noted by the administrative law judge, Dr. Repsher diagnosed COPD in his medical report, but he did

[3] Employer contends that because the administrative law judge cited to *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 23 BLR 2-472 (6th Cir. 2007), a case discussing the presumption at 20 C.F.R. §718.203, the Board must conclude that the administrative law judge gave claimant a presumption that her COPD was due to coal dust exposure. We disagree. Although the administrative law judge's citation to *Barrett* was perhaps misleading, in the context of determining whether claimant has legal pneumoconiosis, the administrative law judge properly based his finding, that claimant established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), on affirmative evidence showing that claimant has a respiratory condition due, in part, to coal dust exposure. *See Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

not identify the cause of claimant's respiratory condition until the hearing, "when he was specifically questioned about it." Decision and Order at 19; *see Hopton v. U.S. Steel Corp.*, 7 BLR 1-12 (1984). The administrative law judge reasonably found that Dr. Repsher "merely quoted the medical literature stating that claimant's catastrophic COPD is the same type of COPD that affects thirteen percent of smokers . . . [but] he failed to discuss how the coal dust inhalation did not accelerate or exacerbate claimant's condition or factor in the possibility that claimant was not part of the thirteen percent affected by cigarette smoke." Decision and Order at 19; *see Consolidation Coal Co. v. Director, OWCP [Beeler]*, 521 F.3d 723, 726, 24 BLR 2-97, 2-103 (7th Cir. 2008). Furthermore, although Dr. Repsher "distinguished claimant's 'pure COPD' at length, stating that coal workers' pneumoconiosis is clinically significant when it is a restrictive disease with some obstructive features" the administrative law judge correctly observed that "obstructive features do not eliminate the existence of pneumoconiosis" under the Act. Decision and Order at 19; *see* 20 C.F.R. §718.201(a)(2). Because the administrative law judge reasonably questioned whether Dr. Repsher's opinion took into account the legal definition of pneumoconiosis at 20 C.F.R. §718.201(a)(2), which allows a miner to show that he has pneumoconiosis based on a purely obstructive respiratory condition due in part to coal dust exposure, we affirm administrative law judge's finding that Dr. Repsher's diagnosis of pure COPD unrelated to coal dust exposure was entitled to less weight as it was not adequately explained.[4] *See* 65 Fed. Reg. 79938 (Dec. 20, 2000).

Similarly, the administrative law judge permissibly found that Dr. Farney's opinion was less credible as he "appears to focus his diagnosis on the clinical definition of pneumoconiosis" and that he did not adequately explain the basis for his opinion that claimant did not have legal pneumoconiosis. Decision and Order at 20; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*). Dr. Farney diagnosed that claimant suffered from COPD due to her thirty-five year cigarette smoking history. Director's Exhibit 21. To support his opinion, that claimant's respiratory condition was unrelated to coal dust exposure, Dr. Farney cited to claimant's negative chest x-ray and

[4] In *Consolidation Coal Co. v. Director, OWCP [Beeler]*, 521 F.3d 723, 24 BLR 2-97 (7th Cir. 2008), the United States Court of Appeals for the Seventh Circuit held that a physician's view that the miner's condition "had to be caused by cigarette smoking because miners rarely have clinically significant obstruction from coal dust" would "lead to the logical conclusion" that the physician "categorically excludes obstruction from coal-dust-induced lung disease and would not attribute any miner's obstruction, no matter how severe, to coal dust." *Beeler*, 521 F.3d at 726, 24 BLR at 2-103. The court found such an opinion to be contrary to the medical literature cited by the Department of Labor in promulgating the revised regulations, which show that nonsmoking miners develop moderate and severe obstruction at the same rate as smoking miners. *Id.*, *citing*, 65 Fed. Reg. 79938 (Dec. 20, 2000).

CT scan. However, as properly noted by the administrative law judge, "the regulations provide that a physician may determine that a miner suffers from pneumoconiosis notwithstanding a negative chest x-ray." Decision and Order at 20; *see* 20 C.F.R. §718.202(a)(4).

Furthermore, Dr. Farney excluded coal dust exposure as a causative factor for claimant's COPD because the PFS he administered showed a mild reversible component after the administration of bronchodilators. Director's Exhibit 21. The administrative law judge permissibly found Dr. Farney's opinion to be less persuasive as mild "broncho-reversibility does not rule out the existence of legal pneumoconiosis because claimant's other respiratory disease could be what is actually improving with the bronchodilators." Decision and Order at 20; *see Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 23 BLR 2-472 (6th Cir. 2007); *Consolidation Coal Co. v. Swiger*, 98 Fed. Appx. 227, 237 (4th Cir. May 11, 2004) (unpub.); *Barnes v. Director, OWCP*, 19 BLR 1-71 (1995) (Decision and Order on Reconsideration) (*en banc*). Additionally, the administrative law judge permissibly concluded that Dr. Farney's opinion was based on generalities in the medical literature, suggesting that twenty-five percent of smokers develop COPD, and did not "specifically consider claimant's condition." *See Beeler*, 521 F.3d at 726, 24 BLR at 2-103; *Knizer v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985).

In contrast to Drs. Repsher and Farney, the administrative law judge considered Dr. Rose's opinion that claimant's COPD was due to both smoking and coal dust exposure, thereby satisfying the definition of legal pneumoconiosis. Decision and Order at 13; Claimant's Exhibit 1. The administrative law judge permissibly found that Dr. Rose's opinion was reasoned and documented in light of her findings on examination, objective medical testing, and review of several other medical reports and Dr. Lambert's treatment records. Decision and Order at 18-19; *see Hansen v. Director, OWCP*, 984 F.2d 364, 17 BLR 2-48 (10th Cir. 1993); *Clark*, 12 BLR at 1-151; *see also Andersen v. Director, OWCP*, 455 F.3d 1102, 1105, 23 BLR 2-332, 2-341 (10th Cir. 2006). The administrative law judge noted that Dr. Rose relied on the following objective testing:

> Dr. Rose opined that the pulmonary function test showed mainly airflow limitation with minimal response to bronchodilator and a decrease in diffusion capacity with evidence of air trapping which was substantially related to and causally associated with coal dust exposure and a thirty-five pack[-]year smoking history.

Id. at 13. The administrative law judge also pointed out that Dr. Rose opined that "claimant's cigarette smoking history likely also contributed to her COPD, but that does not obviate the fact that claimant has coal workers' pneumoconiosis." *Id.* at 13. As the administrative law judge noted, Dr. Rose cited to "several medical journal articles to support her opinion that the claimant's COPD was causally connected to both her coal

mine employment and . . . smoking history, although she could not apportion a specific percentage to either case." *Id*. at 13.

In addition to finding that Dr. Rose's opinion was reasoned and documented, the administrative law judge rationally determined that Dr. Rose's opinion was entitled to controlling weight because of her qualifications. Decision and Order at 18-19; *see Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47 (2004)(*en banc*); *Dillon v. Peabody Coal Co*., 11 BLR 1-113 (1988). As the administrative law judge noted, Dr. Rose is a well-qualified physician with Board-certifications in pulmonary and occupational medicine.[5] Decision and Order at 18, 21. Although employer contends that Drs. Repsher and Farney are also "[Board-certified] specialists in internal medicine and pulmonary disease," the administrative law judge acted within his discretion in finding Dr. Rose's opinion more persuasive and supported by the evidence of record. *Hansen v. Director, OWCP*, 984 F.2d 364, 370, 17 BLR 2-48, 2-59 (10th Cir. 1993); *Clark*, 12 BLR at 1-151; Decision and Order at 21. Because determining the credibility of the medical experts is committed to the discretion of the administrative law judge, we affirm his decision to accord controlling weight to Dr. Rose's opinion and less weight to the opinions of Drs. Repsher and Farney pursuant to 20 C.F.R. §718.202(a)(4).[6] *Id.* Thus, we affirm, as supported by substantial evidence, the administrative law judge's finding that claimant established the existence of legal pneumoconiosis based on Dr. Rose's opinion pursuant to 20 C.F.R. §718.202(a)(4).

II. Disability Due to Pneumoconiosis

Employer also contends that the administrative law judge erred in finding that claimant established that her total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). We disagree. The administrative law judge properly concluded that the opinions of Drs. Repsher and Farney, diagnosing that claimant had no respiratory disability due to coal dust exposure, were entitled to little weight at 20 C.F.R.

[5] The administrative law judge acknowledged that Dr. Rose is the "director of the occupational medicine clinical program at the National Jewish Medical and Research Center." Decision and Order at 12.

[6] Because we affirm the administrative law judge's determination that Drs. Repsher and Farney failed to adequately explain their opinions, any error committed by the administrative law judge in incorrectly stating that Dr. Rose reviewed more evidence than employer's experts is harmless since he cited other permissible reasons for according the opinions of Drs. Repsher and Farney less weight. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378 (1983); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

§718.204(c), as neither of these physicians diagnosed clinical or legal pneumoconiosis. *Id*. at 22; *see Abshire v. D & L Coal Co.*, 22 BLR 1-202, 1-214 (2002)(*en banc*). Furthermore, employer's general assertion that the administrative law judge erred in crediting Dr. Rose's opinion, that claimant is totally disabled due to pneumoconiosis, at 20 C.F.R. §718.204(c), amounts to no more than a request that the Board reweigh the evidence of record, which is beyond the Board's scope of review. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Because the administrative law judge has discretion to determine the credibility of the medical experts and decide the weight to accord their opinions, we affirm his finding that Dr. Rose's opinion was sufficient to satisfy claimant's burden to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). *See Clark*, 12 BLR at 1-151; *Anderson*, 12 BLR at 1-111. Thus, we affirm the administrative law judge's award of benefits as it is supported by substantial evidence.

III. Date of Entitlement

Lastly, employer contends that the administrative law judge erred in finding that claimant is entitled to benefits as of December 2003, the month in which claimant filed her claim. As a general rule, once entitlement to benefits has been demonstrated, the date for commencement of those benefits is determined by the month in which claimant became totally disabled due to pneumoconiosis.[7] 20 C.F.R. §725.503*; see Rochester & Pittsburgh Coal Co. v. Krecota*, 868 F.2d 600, 12 BLR 2-178 (3d Cir. 1989); *Lykins v. Director, OWCP*, 12 BLR 1-181 (1989). If the date of onset of total disability due to pneumoconiosis is not ascertainable from all the relevant evidence of record, benefits will commence with the month during which the claim was filed, unless credited evidence establishes that the miner was not totally disabled due to pneumoconiosis at any subsequent time. 20 C.F.R. §725.503(b); *Owens v. Jewell Smokeless Coal Corp*., 14 BLR 1-47, 1-50 (1990).

In this case, the administrative law judge reviewed the record, and found that the evidence did not establish when claimant became totally disabled and, therefore, found that claimant was entitled to benefits as of December 2003, the month in which claimant filed her application for benefits. Decision and Order at 22. Employer challenges the administrative law judge's application of the default onset date at 20 C.F.R. §725.503(b), asserting that the record establishes that claimant continued to work until November 2004. Employer maintains that "an award of benefits for eleven months prior to [claimant's] termination" is prohibited under Section 413(d) of the Act, 30 U.S.C. §

[7] The pertinent regulation 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).

923(d), which states, in pertinent part, that "[n]o miner who is engaged in coal mine employment shall...be entitled to any benefit[s] under this part while so employed." 30 U.S.C. §923(d). Brief in Support of Petition for Review at 29.

Employer's argument is rejected as without merit. Although a miner cannot receive benefits, absent a finding of complicated pneumoconiosis, for any period during which he was engaged in coal mine employment, the default date for onset, set forth at 20 C.F.R. §725.503(b), is controlling whenever the evidence fails to establish when a miner became totally disabled. 20 C.F.R. §725.503(b); *see Amax Coal Co. v. Director, OWCP [Chubb]*, 312 F.3d 882, 22 BLR 2-514 (7th Cir. 2002). Therefore, even if there is continued employment after a miner files his or her claim for benefits, the administrative law judge may still apply the date of filing as the correct default date from which benefits commence, with benefits suspended during the period that the miner is engaged in coal mine employment or comparable and gainful employment. *Chubb*, 312 F.3d 892, 22 BLR at 2-531.

In this case, contrary to employer's assertion, the exhibits cited by employer do not establish that claimant worked beyond December 2003, and specifically fail to show that claimant worked eleven months after she filed her claim, until November 2004.[8] *See Sarf v. Director, OWCP*, 10 BLR 1-119, 1-121 (1987). Because the parties do not challenge the administrative law judge's determination that the medical evidence does not establish the date on which claimant became totally disabled due to pneumoconiosis, *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983), we affirm the administrative law judge's application of the default onset date at 20 C.F.R. §725.503(b), and his finding that claimant is entitled to benefits as of December 2003, the month she filed her claim for benefits.

[8] The three exhibits cited by employer include Form CM-911 (Miner's Claim for Benefits), Form CM-911a (Employment History), and Form CM-913 (Description of Coal Mine Work), none of which establish the date claimant terminated her employment. Director's Exhibits 2-4. Claimant wrote on her claim form, dated December 1, 2003, that she was still employed. Director's Exhibit 2. She completed the Form CM-913 (Description of Coal Mine Work) on December 1, 2003, explaining that she was still employed but had been off work on sick leave since November 6, 2003. Director's Exhibit 4. Claimant further wrote on the Form CM-911a (Employment History), dated December 17, 2003, that she was still employed. Director's Exhibit 3.

Accordingly, the administrative law judge's Decision and Order 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