U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 16-0136 BLA

ALBERT PERRY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
WESTMORELAND COAL COMPANY c/o WELLS FARGO DISABILITY MANAGEMENT	)	DATE ISSUED: 01/17/2017
	)	
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 Peter B. Silvain, Jr., Administrative Law Judge, United States Department of Labor.

Thomas W. Moak (Moak & Nunnery), Prestonsburg, Kentucky, for claimant.

Paul E. Frampton and Michael J. Schessler (Bowles Rice LLP), Charleston, West Virginia, for employer/carrier.

Emily Goldberg-Kraft (M. Patricia Smith, Solicitor of Labor; Maia S. Fisher, 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: HALL, Chief Administrative Appeals Judge, BOGGS and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2011-BLA-5710) of Administrative Law Judge Peter B. Silvain, Jr., rendered on a subsequent claim filed on April 19, 2010, pursuant to provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).[1] Based on the parties' stipulation, the administrative law judge credited claimant with twenty-nine years of underground coal mine employment. The administrative law judge also found that claimant established total disability at 20 C.F.R. §718.204(b)(2)(i), (iv) and, therefore, established a change in an applicable condition of entitlement at 20 C.F.R. §725.309. Consequently, the administrative law judge determined that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[2] The administrative law judge further found that employer did not rebut the presumption and awarded benefits accordingly.

On appeal, employer argues that the administrative law judge erred in finding that claimant established total disability, invocation of the Section 411(c)(4) presumption, and a change in an applicable condition of entitlement at 20 C.F.R. §725.309. Employer also asserts that the administrative law judge erred in determining that it did not rebut the presumption. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), filed a limited brief,

[1] Claimant filed an initial claim for benefits on September 9, 1994, which the district director denied because claimant failed to prove any of the elements of entitlement. Director's Exhibit 1. Claimant did not take any further action until filing the current claim.

[2] Under Section 411(c)(4) of the Act, a miner's total disability is presumed to be due to pneumoconiosis if he or she had at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012), as implemented by 20 C.F.R. §718.305(b).

contending that the administrative law judge permissibly found total disability established based on the pulmonary function study evidence.[3]

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.[4] 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).

I. Invocation of the Presumption – Total Disability

A. Pulmonary Function Studies

Pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge considered newly submitted pulmonary function studies dated June 2, 2010, August 2, 2011, August 26, 2013, and February 17, 2014. Decision and Order at 8-9, 18; Director's Exhibits 14, 45; Claimant's Exhibit 6; Employer's Exhibit 1. The administrative law judge also reviewed the non-qualifying[5] pulmonary function studies, dated August 23, 1994, October 12, 1994, November 2, 1994, May 17, 1995, and June 5, 1995, submitted in conjunction with claimant's prior claim, but indicated that he did not consider them when determining whether claimant established a change in an applicable condition of entitlement at 20 C.F.R. §725.309. Decision and Order at 9; Director's Exhibit 1. The administrative law judge concluded that claimant established total disability, based on the qualifying values of the two most recent studies, dated August 26, 2013 and February 17, 2014. Decision and Order at 18.

[3] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant had twenty-nine years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[4] The record reflects that claimant's last coal mine employment occurred in Virginia. Director's Exhibit 4; Hearing Transcript at 22, 31. Accordingly, the Board will apply the law of the United States Court of Appeals for the Fourth Circuit *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[5] A "qualifying" pulmonary function study yields values that are equal to or less than the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i).

Employer asserts that the administrative law judge erred by failing to also weigh the pulmonary function studies from claimant's prior claim, all of which were non-qualifying. Additionally, employer contends that the administrative law judge should have discredited the more recent pulmonary function studies, as the August 26, 2013 study by Dr. Alam showed "a failure of the [c]laimant to maintain the prebronchodilator FVC maneuver for the requisite seven seconds and to reach a plateau of one second duration as required by 20 C.F.R. Part 718 (2012), Appendix B (2)(C)." Employer's Brief at 7. Further, employer argues that the administrative law judge's dependence upon pulmonary function studies conducted after claimant turned seventy-two years old is improper because it "relies on the fiction that [the current claimant], or any claimant over the maximum age listed on the tables, would be physically capable of returning to work in the mines even if they achieved maximum expected values for pulmonary function." Employer's Brief at 9.

Contrary to employer's assertion, the administrative law judge properly considered only the newly submitted pulmonary function studies in determining whether claimant demonstrated a change in an applicable condition of entitlement under 20 C.F.R. §725.309.[6] *See White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). With respect to whether the pulmonary function studies of record as a whole are sufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(i), the administrative law judge summarized the results from the studies submitted in claimant's prior claim and acted within his discretion in finding that "[m]ore weight may be accorded to the results of a recent ventilatory study over those of an earlier study." Decision and Order at 18; *see Parsons v. Wolf Creek Collieries*, 23 BLR 1-29 (2004) (en banc); *Workman v. Eastern Associated Coal Corp.*, 23 BLR 1-22 (2004) (en banc); *see also Cooley v. Island Creek Coal Co.*, 845 F.2d 622, 624, 11 BLR 2-147, 2-149 (6th Cir. 1988) (The miner's condition as of the date of hearing is the relevant point of inquiry.).

[6] When a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *see White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(4); *White*, 23 BLR at 1-3. Claimant's prior claim was denied for failure to establish any of the elements of entitlement. Director's Exhibit 1. Consequently, in order to obtain review of the merits of his current subsequent claim, claimant had to submit new evidence establishing at least one element of entitlement.

We also reject employer's argument that the August 26, 2013 qualifying pulmonary function study administered by Dr. Alam is not valid. Employer did not contest the validity of the test when this case was before the administrative law judge. Consequently, it is foreclosed from raising the issue on appeal. *See Kurcaba v. Consolidation Coal Co.*, 9 BLR 1-73, 1-75 (1986); *Taylor v. 3D Coal Co.*, 3 BLR 1-350, 1-355 (1981). Further, employer cites no medical opinion evidence in support of its assertion, while two physicians, Drs. Alam and Gaziano, validated the study. *See Schetroma v. Director, OWCP*, 18 BLR 1-19, 1-22 (1993); *Marcum v. Director, OWCP*, 11 BLR 1-23, 1-24 (1987); *Siegel v. Director, OWCP*, 8 BLR 1-156, 1-157 (1985). Director's Exhibit 45. Moreover, as the Director maintains, the quality standards provide that an administrative law judge "may consider" the fact that "one or more standards have not been met" in determining the evidentiary weight to be given to the results of the pulmonary function tests, but he or she is not required to do so. 20 C.F.R. Part 718, Appendix B.

Finally, there is no merit in employer's contention that the administrative law judge erred in relying on the table values for the top age limit of seventy-one when claimant was over seventy-one at the time the most recent studies were performed. The Board has consistently held that, absent medical evidence to the contrary, an administrative law judge may apply the pulmonary function table values for seventy-one year olds when miners are older than the upper age limit of the table. *See Styka v. Jeddo-Highland Coal Co.*, 25 BLR 1-61, 1-65-66 (2012); *KJM* [*Meade*] *v. Clinchfield Coal Co.*, 24 BLR 1-41, 1-47 (2008). Because employer did not raise this issue below, and there is no medical evidence in the record supporting employer's contention, we affirm the administrative law judge's finding that claimant established total disability at 20 C.F.R. §718.204(b)(2)(i).

B. Blood Gas Studies and Evidence of Cor Pulmonale

The administrative law judge permissibly determined that claimant did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii), because none of the blood gas studies are qualifying.[7] Decision and Order at 10, 19; Director's Exhibits 1, 14; Claimant's Exhibit 6; Employer's Exhibit 1. Additionally, because there is no evidence in the record that claimant has cor pulmonale with right-sided congestive heart failure, claimant could not establish total disability at 20 C.F.R. §718.204(b)(2)(iii).

[7] A "qualifying" blood gas study yields values that are equal to or less than the appropriate values set out in the table at 20 C.F.R. Part 718, Appendix C. A "non-qualifying" study yields values that exceed those in the table. 20 C.F.R. §718.204(b)(2)(ii).

C. Medical Opinion Evidence

At 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge considered the medical opinions of Drs. Alam, Fino, Hippensteel, and Tuteur. Decision and Order at 19-20; Director's Exhibit 14, 45; Claimant's Exhibits 1, 3; Employer's Exhibits 1, 3, 4. The administrative law judge found that the diagnoses of a totally disabling respiratory impairment by Drs. Alam and Fino outweighed the contrary opinions of Drs. Hippensteel and Tuteur. Decision and Order at 19. The administrative law judge relied on Dr. Alam's status as claimant's treating physician and further determined that the opinions of Drs. Alam and Fino are better supported by the evidence of record. *Id*.

Employer contends that the administrative law judge erred in giving greater weight to Dr. Alam's opinion, on the basis that he is claimant's treating physician, without considering that he relied on an invalid pulmonary function study. Employer cites the Board's unpublished decision in *Cozart v. Powell Mountain Coal Co., Inc.*, BRB No. 15-0277 BLA (Mar. 7, 2016) (unpub.), in support of its position. Employer further alleges that the administrative law judge erred in finding that Dr. Alam's opinion is reasoned because it was supported by his diagnoses of chronic bronchitis and shortness of breath, as "the mere reference to the presence of a disease or condition . . . is not necessarily reflective of the presence or absence of impairment."[8] Employer's Reply Brief at 6. Finally, employer argues that the administrative law judge erred in crediting Dr. Fino's opinion, without addressing the physician's reliance on the October 21, 2010 pulmonary function study he performed, but that was invalidated due to claimant's poor effort.

Employer's allegations concerning the validity of the August 26, 2013 pulmonary function study administered by Dr. Alam, and its effect on the probative value of his opinion diagnosing a totally disabling impairment, have no merit. As explained *supra*, employer did not raise the issue below; moreover, employer has not cited any medical opinion evidence in support of its claim that the August 26, 2013 study is invalid, and there is medical opinion evidence validating the tests. Furthermore, the present case is distinguishable from *Cozart*, in which the Board vacated an administrative law judge's decision to credit Dr. Alam's diagnosis of a totally disabling respiratory or pulmonary

[8] The administrative law judge gave less weight to the contrary opinions of Drs. Hippensteel and Tuteur that claimant is not totally disabled due to a respiratory or pulmonary impairment. Decision and Order at 19-20; Director's Exhibit 45; Employer's Exhibits 1-4. Because employer does not challenge these findings, we affirm them. *See Skrack*, 6 BLR at 1-711.

impairment opinion without resolving the question of whether the pulmonary function study Dr. Alam performed was valid. In *Cozart*, two physicians questioned the validity of Dr. Alam's pulmonary function testing and the results of the test conducted by Dr. Alam were inconsistent with the other pulmonary function testing of record. As noted *supra*, in this case there is no controversy in the record evidence as to the validity of the test conducted by Dr. Alam. Consequently, the administrative law judge acted within his discretion in giving greater weight to Dr. Alam's opinion in this case because Dr. Alam's conclusions were consistent with the underlying evidence, including the objective studies and claimant's respiratory symptoms. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17, 25 BLR 2-115, 2-133 (4th Cir. 2012).

In considering Dr. Fino's opinion, the administrative law judge acknowledged Dr. Fino's notation that claimant did not give "maximum effort" on the FVC portion of the October 21, 2010 pulmonary function study. Decision and Order at 13, 19; Claimant's Exhibit 3. Contrary to employer's argument, however, Dr. Fino did not invalidate the entire study. He reported that the flow volume time curves were "okay" and showed obstruction, which he characterized as "probably somewhere between mild and moderate." Claimant's Exhibit 3. Dr. Fino further opined, "[claimant's] last job did require heavy manual labor so he would be disabled from returning to his last mining job or job requiring similar effort" due to his obstructive impairment. *Id.* Accordingly, the administrative law judge acted within his discretion in finding that Dr. Fino's medical opinion diagnosing a totally disabling impairment was reasoned and documented. *Looney*, 678 F.3d at 316-17, 25 BLR at 2-133; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 537, 21 BLR 2-323, 2-341 (4th Cir. 1998); *Mining, Inc. v. Napier*, 301 F.3d 703, 713-14, 22 BLR 2-537, 2-553 (6th Cir. 2002).

We therefore affirm the administrative law judge's determination that claimant established total disability at 20 C.F.R. §718.204(b)(2)(iv) and further affirm his findings that the weight of the evidence as a whole was sufficient to establish total disability at 20 C.F.R. §718.204(b)(2), a change in an applicable condition of entitlement at 20 C.F.R. §725.309, and invocation of the Section 411(c)(4) presumption.

II. Rebuttal of the Presumption

Because claimant invoked the Section 411(c)(4) presumption, the burden shifted to employer to rebut the presumption by establishing that claimant has neither legal[9] nor

[9] Legal pneumoconiosis is defined as "any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). This definition "includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." *Id.* The phrase "arising out of

clinical pneumoconiosis,[10] or by establishing that "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in § 718.201." 20 C.F.R. §718.305(d)(1)(i), (ii); *see W. Va. CWP Fund v. Bender*, 782 F.3d 129, 137, 25 BLR 2-689, 2-699 (4th Cir. 2015); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-154-46 (2015) (Boggs, J., concurring and dissenting).

A. Legal Pneumoconiosis

In determining whether employer affirmatively disproved the existence of legal pneumoconiosis under 20 C.F.R. 718.305(d)(1)(i)(A), the administrative law judge considered the medical opinions of Drs. Hippensteel, Tuteur, Alam and Fino. Decision and Order at 24; Director's Exhibits 14, 45; Claimant's Exhibits 1, 3; Employer's Exhibits 1-4. The administrative law judge discredited the opinions of Drs. Hippensteel and Tuteur that claimant does not have legal pneumoconiosis, because they did not adequately explain how they excluded claimant's twenty-nine years of coal dust exposure as a contributing factor to claimant's obstructive impairment. Decision and Order at 24. The administrative law judge found that the opinions of Drs. Alam and Fino did not aid employer in rebutting the presumption, as Dr. Alam diagnosed legal pneumoconiosis and Dr. Fino stated that he could not exclude coal dust as a contributing factor to claimant's respiratory impairment. *Id*.

Employer argues that the administrative law judge failed to consider the non-qualifying blood gas studies as probative evidence rebutting the presumed existence of legal pneumoconiosis. Additionally, employer alleges that, contrary to the administrative law judge's finding, both Dr. Hippensteel and Dr. Tuteur provided clear rationales as to why the evidence does not support the diagnosis of a respiratory or pulmonary impairment related to coal dust exposure.

Employer's contentions are without merit. As explained *supra*, we have affirmed the administrative law judge's finding of a totally disabling respiratory impairment based

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coal mine employment" denotes "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).

[10] "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconiosis, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

on claimant's pulmonary function studies. Employer does not cite any evidence to support its argument that claimant's non-qualifying blood gas studies conflict with, and render invalid, his qualifying pulmonary function testing. Furthermore, we note that pulmonary function tests and arterial blood gas studies measure different types of impairment. *See Sheranko v. Jones and Laughlin Steel Corp*., 6 BLR 1-797, 1-798 (1984).

In addition, the administrative law judge did not err in giving less weight to the opinions of Drs. Hippensteel and Tuteur. Dr. Hippensteel testified that "industrial bronchitis from coal mining is regularly a finding that does subside in a period of several months after leaving work in the mines, and this man continued to have chronic bronchitis a long number of years after leaving work in the mines." Director's Exhibit 45; Employer's Exhibit 4 at 14. Similarly, although Dr. Tuteur stated that an impairment due to coal dust exposure can manifest after the cessation of coal dust exposure, he indicated that "typically, it's within the first year or two" and "[t]hat was not the case here." Director's Exhibit 45; Employer's Exhibit 3 at 20. Therefore, the administrative law judge rationally concluded that Drs. Hippensteel and Tuteur failed to address why, in this specific case, coal dust exposure could not have contributed to claimant's respiratory impairment, especially given the latent and progressive nature of pneumoconiosis, which may become detectable only after coal dust exposure ends. 20 C.F.R. §718.201(c); *see Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151, 11 BLR 2-1, 2-9 (1987); *Consolidation Coal Co. v. Williams*, 453 F.3d 609, 616, 23 BLR 2-345, 2-351 (4th Cir. 2006). Consequently, the administrative law judge acted within his discretion in concluding that Drs. Hippensteel and Tuteur did not adequately explain why claimant's twenty-nine year history of coal dust exposure was not a contributing cause to claimant's chronic bronchitis.[11] *Hicks*, 138 F.3d at 537, 21 BLR at 2-341; *Napier*, 301 F.3d at 713-714, 22 BLR at 2-553; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); Decision and Order at 23-24. In light of the administrative law judge's permissible discrediting of the medical opinions of Drs.

[11] In light of the administrative law judge's finding that the opinions of Drs. Alam and Fino do not aid employer in rebutting the presumption, we need not consider employer's arguments concerning the administrative law judge's weighing of these opinions. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). Moreover, employer is incorrect in asserting that Dr. Fino's inability to reach a definitive conclusion regarding the cause of claimant's obstructive impairment assists it in satisfying its burden to affirmatively disprove the existence of legal pneumoconiosis under 20 C.F.R. §718.305(d)(1)(i)(A). *See W. Va. CWP Fund v. Bender*, 782 F.3d 129, 137, 25 BLR 2-689, 2-699 (4th Cir. 2015); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-154-46 (2015) (Boggs, J., concurring and dissenting).

Tuteur and Hippensteel, we affirm his finding that employer failed to rebut the presumed existence of legal pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i)(A).[12]

B. Total Disability Causation

Concerning rebuttal of the presumption that claimant's totally disabling respiratory impairment is due to pneumoconiosis, the administrative law judge stated:

> I can find no specific and persuasive reasons for concluding that Dr. Hippensteel's and Dr. Tuteur's judgement, that exposure to coal dust did not cause or contribute to the [c]laimant's impairment, did not rest upon their disagreement with my finding that the [c]laimant had legal pneumoconiosis. Under these circumstances, I find that their opinions that coal dust did not contribute to his impairment cannot rebut the presumption.

Decision and Order at 25.

Employer argues that the administrative law judge erred by failing to find that the opinions of Drs. Hippensteel and Tuteur are sufficient to establish rebuttal based on their opinions that no part of claimant's disability is due to pneumoconiosis. Employer further asserts that "the true cause[s] of this miner's inability to return to work in the coal mines are his age and physical limiting conditions other than lung disease." Employer's Brief at 23.

We hold that the administrative law judge's decision to discredit the opinions of Drs. Hippensteel and Tuteur is supported by substantial evidence. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-208, 22 BLR 2-162, 2-168 (4th Cir. 2000); *Hicks*, 138 F.3d at 528, 21 BLR at 2-326. Because the administrative law judge rationally found that the opinions of Drs. Hippensteel and Tuteur are not credible to disprove the existence of legal pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i)(A), and employer has not cited any evidence contrary to his determination that their causation opinions rest on their failure to diagnose legal pneumoconiosis, the administrative law judge also permissibly found that their opinions as to whether claimant's total disability was caused by legal

[12] Because we affirm the administrative law judge's finding that employer did not rebut the presumed existence of legal pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i)(A), we need not address its contentions that the administrative law judge erred in finding that it did not rebut the presumed existence of clinical pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i)(B). *See Bender*, 782 F.3d at 137, 25 BLR at 2-699; *Minich*, 25 BLR at 1-154-46

pneumoconiosis are not entitled to probative weight at 20 C.F.R. §718.305(d)(1)(ii). *See Scott v. Mason Coal Co.*, 289 F.3d 263, 269-70, 22 BLR 2-372, 2-383-84 (4th Cir. 2002); *Toler v. Eastern Associated Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83-84 (4th Cir. 1995); Decision and Order at 24-25. Thus, we affirm the administrative law judge's determination that employer failed to rebut the Section 411(c)(4) presumption by showing that pneumoconiosis did not contribute to the Miner's pulmonary disability.

Having affirmed the administrative law judge's findings that employer did not rebut the Section 411(c)(4) presumption under either available method, we further affirm the denial of benefits. *See Bender*, 782 F.3d at 137, 25 BLR at 2-699; *Minich*, 25 BLR at 1-154-46.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge