

BRB No. 97-0584 BLA

HOPE O. TICHENOR)
)
 Claimant-Respondent)
)
 v.)
)
 IMPERIAL COLLIERY COMPANY)
)
 and)
)
 HANSFORD COAL COMPANY)
)
 Employers-Petitioners)
)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest)

DATE ISSUED:

DECISION and ORDER

Appeal of the Decision and Order on Remand of Clement J. Kichuk,
Administrative Law Judge, United States Department of Labor.

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Mary Rich Maloy (Jackson & Kelly), Charleston, West Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order on Remand (87-BLA-0631) of Administrative Law Judge Clement J. Kichuk determining the date of the onset of total disability due to complicated pneumoconiosis on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). This claim is before the Board for the third time. In its previous

Decision and Order, the Board affirmed Administrative Law Judge John H. Bedford's finding that claimant¹ established invocation of the irrebuttable presumption found at 20 C.F.R. §410.418 by establishing the existence of complicated pneumoconiosis as of July 7, 1976, and his finding that Imperial Colliery Company (Imperial) is the responsible operator. *Tichenor v. Imperial Colliery Co.*, BRB No. 89-1960 BLA (Apr. 28, 1994)(unpub.). On reconsideration, the Board vacated the administrative law judge's findings regarding the onset of complicated pneumoconiosis and the responsible operator issue due to the administrative law judge's application of the true doubt rule in making his findings and remanded the case for the administrative law judge to reconsider the onset and responsible operator issues. *Tichenor v. Imperial Colliery Co.*, BRB No. 89-1960 BLA (May 10, 1996)(unpub.).

On remand, Administrative Law Judge Clement J. Kichuk found that the date of onset of complicated pneumoconiosis was July 7, 1976, that Imperial is the responsible operator, and claimant is entitled to benefits commencing July 7, 1976. In the instant appeal, employer contends that the administrative law judge erred in determining the onset and responsible operator issues. Claimant responds urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), responds declining to participate in this appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence and contain no reversible error therein. On appeal, employer contends that the administrative law judge erred in weighing the opinions of Drs. Jacobson and Hamilton. Employer's Brief at 7-9. Dr. Jacobson, a B-reader, interpreted a film dated July 7, 1976 as 3/3 with size A large opacities. Director's Exhibit 10. Dr. Hamilton, in an opinion dated April 26, 1975, diagnosed category 2 pneumoconiosis, peribronchial fibrosis, "emphysema cum Chr. Asmatic Hypertension..Cardio-vascular-Disease cum Cardiac Hypertrophy cum Arterial Hypertension..Traumatic Osteoarthritis of Lumbar Spine" and

¹Claimant is Hope O. Tichenor, the miner, who filed a claim for benefits on June 21, 1976. Director's Exhibit 1. The miner died on October 12, 1988. Employer's Letter of November 28, 1988.

opined that claimant was permanently disabled, unemployable in regular industry, and with questionable rehabilitation. Hansford Exhibit 1.

Upon considering the issue of the onset of claimant's complicated pneumoconiosis, the administrative law judge noted that the evidence of record indicates that the miner's pneumoconiosis followed a progressive course and advanced from simple to complicated pneumoconiosis. Decision and Order on Remand at 7. The administrative law judge then rationally credited Dr. Jacobson's 1976 x-ray interpretation because he is well qualified and his finding of complicated pneumoconiosis was consistent with the progressive nature of the disease and the progressive course of claimant's illness. Decision and Order on Remand at 7-8; *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). The administrative law judge also rationally found Dr. Jacobson's interpretation to be supported by Dr. Hamilton's opinion that the miner was totally disabled in April of 1975 and Dr. Bassali's interpretation of a September, 1985 x-ray as showing category B complicated pneumoconiosis, because this evidence shows a progressive worsening of claimant's condition. Decision and Order on Remand at 8; Hansford, Exhibit 1; Director's Exhibit 29; *Lafferty, supra*. The administrative law judge then found that claimant suffered from complicated pneumoconiosis as early as July 7, 1976, the date of Dr. Jacobson's interpretation, and properly found that Imperial is the responsible operator.² Decision and Order on Remand at 7-8. *Swanson v. R.G. Johnson Co.*, 15 BLR 1-149 (1991); *Rowan v. Lewis Coal and Coke Co.*, 12 BLR 1-31 (1988); *Lafferty, supra*.

The administrative law judge is empowered to weigh the evidence and to draw his own inferences therefrom, see *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's findings regarding the onset of complicated pneumoconiosis, the responsible operator issue and the date of entitlement to benefits.

²Where complicated pneumoconiosis is established, the operator who employed the miner at the time of establishment of complicated pneumoconiosis is responsible for payment of benefits, regardless of continued coal mine employment. See *Swanson v. R.G. Johnson Co.*, 15 BLR 1-149 (1991); *Rowan v. Lewis Coal and Coke Co.*, 12 BLR 1-31 (1988). In the present claim, claimant was employed by Imperial as of July 7, 1976, the date of onset of complicated pneumoconiosis. Director's Exhibit 5.

Accordingly, the administrative law judge's Decision and Order on Remand determining the date of onset of complicated pneumoconiosis is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge