BRB No 00-0549 BLA

EARLENE CONNOLLY (On behalf of JOHN P. CONNOLLY, deceased) Claimant-Respondent v. PEABODY COAL COMPANY and OLD REPUBLIC INSURANCE COMPANY Employer/Carrier- 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--Awarding Benefits of Daniel F. Sutton, Administrative Law Judge, United States Department of Labor.

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

W. William Prochot (Greenberg Traurig, LLP), Washington, D.C., for employer.

Sarah M. Hurley (Howard M. Radzely, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand--Awarding Benefits (84-BLA-3250) of Administrative Law Judge Daniel F. Sutton rendered on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. ' 901 *et seq*. (the Act).

[1] The miner filed this application for benefits on April 17, 1978. Director's Exhibit 1. Since his death his surviving spouse has pursued his claim, which is before the Board for the third time. Previously, the Board discussed fully this claim=s procedural history. *Connolly v. Peabody Coal Co*., BRB No. 98-0818 BLA (Sep. 3, 1999)(unpub.). We now focus on only those procedural aspects relevant to the issues raised in this appeal of the administrative law judge=s decision to award benefits commencing as of April 1978.

In a Decision and Order on Remand issued on February 17, 1998, the administrative law judge found that the evidence of record established invocation of the interim presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. ' 727.203(a)(1), (a)(2) and (a)(4), and further found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits. In ordering the payment of benefits, the administrative law judge did not attempt to ascertain when the miner became totally disabled due to pneumoconiosis, but instead automatically selected April 1978, the month in which the claim was filed, as the date from which benefits should commence.

[1] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations. Where a citation to the regulations is followed by A(2000),@ the reference is to the old regulations.

Upon consideration of employer=s appeal, the Board held that the administrative law judge permissibly accorded greater weight to the positive readings of the most recent x-rays as consistent with the progressive nature of pneumoconiosis, to find that the x-ray evidence established invocation of the interim presumption pursuant to Section 727.203(a)(1). [1999] *Connolly*, slip op. at 3-5. Additionally, the Board affirmed the administrative law judge=s findings that invocation was also established by qualifying[2] pulmonary function study results and by medical opinions diagnosing claimant with a totally disabling respiratory or pulmonary impairment pursuant to Sections 727.203(a)(2), (a)(4). [1999] *Connolly*, slip op. at 3 n.2. The Board further held that substantial evidence supported the administrative law judge=s findings that employer did not establish rebuttal pursuant to either Section 727.203(b)(3) or (b)(4). [1999] *Connolly,* slip op. at 5-7. Accordingly, the Board affirmed the award of benefits. However, the Board vacated the administrative law judge=s determination that benefits were to commence as of April 1978, and remanded the case for him to determine whether the medical evidence established the month of onset of total disability due to pneumoconiosis. [1999] *Connolly*, slip op. at 7-8. The Board instructed the administrative law judge that under the default onset date rule, if the evidence did not establish the month of onset, benefits would be payable from the month in which the miner=s claim was filed, unless credited evidence established that the miner was not totally disabled due to pneumoconiosis at any subsequent time. *Id*.; *see* 20 C.F.R. ' 725.503(b)(2000).

On remand, the administrative law judge weighed the medical evidence and found it inconclusive as to the date of onset of total disability due to pneumoconiosis. The administrative law judge found that the pulmonary function studies and medical opinions that he had credited to find invocation established pursuant to Section 727.203(a)(2), (a)(4) indicated that the miner was totally disabled due to pneumoconiosis Aat least by October 31, 1978,@ which in turn demonstrated Aonly that the miner became totally disabled at some point prior to@ that date. Decision and Order on Remand at 4, 5. The administrative law judge additionally found that the thirteen blood gas studies of record, six qualifying and seven non-qualifying, were not helpful in Aestablish[ing] when or whether the miner either was or was not totally disabled due to pneumoconiosis.@ *Id*.

In addition, the administrative law judge considered that the miner=s chest x-rays were uniformly read as negative for pneumoconiosis from January 1978 until July 14, 1984, when the first positive readings appeared. The administrative law judge observed that this pattern of readings Asuggest[ed] that the miner=s total

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[2] A Aqualifying@ objective study yields values which are equal to or less than the values specified in the tables at 20 C.F.R. ' ' 727.203(a)(2), (3). A Anon-qualifying@ study exceeds those values.

disability could not have been due to pneumoconiosis until the disease was radiographically detected in 1984. . . .@ Decision and Order on Remand at 5. However, the administrative law judge was reluctant to conclude that the early, negative x-ray readings, standing alone, conclusively proved the absence of pneumoconiosis prior to July 1984. Accordingly, the administrative law judge declined to credit the negative x-rays as definitive proof that the miner was not totally disabled due to pneumoconiosis subsequent to the filing date of his claim. Because the administrative law judge concluded that, Athe precise date on which the [miner] became totally disabled due to pneumoconiosis can not [sic] be ascertained,@ Decision and Order on Remand at 5, he awarded benefits commencing in April 1978, the month in which the miner filed his claim.

On appeal, employer contends that the administrative law judge deprived employer of the opportunity to file a brief or to request that the record be reopened on remand when he issued his Decision and Order on Remand without first notifying the parties that he had resumed jurisdiction over the case. In addition, employer argues that the onset regulation, as set forth at 20 C.F.R. '725.503(b), violates Section 7(c) of the Administrative Procedure Act (APA), 5 U.S.C. '557(c)(3)(A), as incorporated into the Act by 5 U.S.C. '554(c)(2), 33 U.S.C. '919(d) and 30 U.S.C. '932(a), because it shifts the burden of proof to employer to establish a date of onset of total disability. Employer also asserts that even if 20 C.F.R. '725.503(b) is valid under the APA, the administrative law judge erred in finding that the medical evidence did not establish the date of onset. Claimant responds, urging affirmance, and the Director, Office of Workers= Compensation Programs (the Director), responds, arguing that 20 C.F.R. '725.503(b) does not conflict with the APA. Employer has filed a reply brief reiterating its contentions.

Pursuant to a lawsuit challenging revisions to forty-seven of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief and stayed, for the duration of the lawsuit, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determines that the regulations at issue in the lawsuit will not affect the outcome of the case. *National Mining Ass=n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). In the present case, the Board established a briefing schedule by order issued on February 21, 2001, to which all parties have responded. Claimant and the Director state that none of the regulations at issue in the lawsuit affect the outcome of this case. Employer, however, contends that two challenged regulations, 20 C.F.R. '718.201(c)(defining pneumoconiosis as a latent and progressive disease), and 20 C.F.R. '725.503(setting forth the method for determining the date from which benefits are payable), affect the outcome of this case.

After reviewing the parties= responses, the Board was initially unable to determine whether the challenged regulations affect the outcome of this case,

because it was unclear what authority governed the onset determination in this claim. Specifically, this claim was filed on April 17, 1978, and is therefore governed by the adjudicatory criteria set forth in 20 C.F.R. Part 727. Prior to the revision of the regulations, 20 C.F.R. '725.503(b) applied to determine the date for the commencement of benefits in Part 727 claims such as this one. 20 C.F.R. '725.503(b)(2000). However, revised 20 C.F.R. '725.503(a) now provides that the onset date Afor any claim approved under part 727 shall be determined in accordance with '727.302 (see '725.4(d)).@ 65 Fed. Reg. 80086 (2000). Section 727.302 contains specific benefits commencement date provisions for claims which had either been denied or were pending as of March 1, 1978, and which are reviewed and awarded under Part 727 pursuant to Section 435 of the Act.[3] *See* 20 C.F.R. ''727.302(a)-(e), 727.104-108 (2000). This claim, filed on April 17, 1978 and thus not subject to review under Section 435 of the Act, did not appear to fall within any of the provisions of Section 727.302.

In view of the issue presented, the Board ordered the parties to file briefs within thirty days of receipt of the Board=s order Aaddressing what regulation applies to determine the onset date of a Part 727 claim filed on April 17, 1978. *See* 20 C.F.R. '802.215.@ *Connolly v. Peabody Coal Co.*, BRB No. 00-0549 BLA (May 2, 2001)(Order)(unpub.). Claimant responds that 20 C.F.R. '727.302 applies, but claimant does not address the lack of a clearly applicable provision in Section 727.302. Employer responds that it is unclear which regulation applies. The Director responds that despite revised Section 725.503(a)=s reference to Section 727.302 for the onset criteria in all Part 727 claims, Section 727.302 is Asilent . . . with regard to Part 727 claims, such as this one, filed after March 1, 1978.@ Director=s Brief at 4. The Director therefore argues that to the extent revised Section 725.503(a) and Section 727.302 are Aambiguous or awkwardly drafted,@ the Director=s reasonable interpretation of these regulations should control. Director=s Brief at 6.

The Director=s interpretation of the regulations is that onset determinations for Part 727 claims filed after March 1, 1978, except for those awarded on modification based on a change in conditions, Aare governed by Section 725.503(b), notwithstanding Section 727.302=s silence concerning those claims.@ Director=s Brief at 4. The Director reaches this result by construing Section 727.302(e), which governs onset determinations for Part 727 claims which were either pending or denied as of March 1, 1978, as also encompassing post-Reform Act Part 727 claims such as this one. Director=s Brief at 5; *see* 20 C.F.R. ''727.302(e), 727.108. Section 727.302(e) in turn provides that benefits Ashall be payable as provided in

[3] The Black Lung Benefits Reform Act of 1977 provided for the review of such claims under liberalized entitlement criteria. 30 U.S.C. '945. The Director refers to such claims as AReform Act review claims.@ Director=s Brief at 3.

' 725.503 of this subchapter.@ 20 C.F.R. ' 727.302(e). In the Director=s view, this interpretation fills an inadvertently-created gap in a manner consistent with the Department of Labor=s long-standing approach to onset determinations and with the Department=s intent in revising Section 725.503.

We begin our analysis by recognizing that the Director=s interpretation of the regulations Ais controlling unless it is plainly erroneous or inconsistent with the regulation.@[4] *Freeman United Coal Mining Co. v. Director, OWCP [Taskey]*, 94 F.3d 384, 387, 20 BLR 2-348, 2-355 (7th Cir. 1996). We also bear in mind that it is appropriate to Alook past the express language of a regulation [where] it is ambiguous or where a literal interpretation would lead to an >absurd result or thwart the purpose of the overall statutory scheme.=@ *First Nat. Bank of Chicago v. Standard Bank & Tr.*, 172 F.3d 472, 477 (7th Cir. 1999)(quoting *United States v. Hayward*, 6 F.3d 1241, 1245 (7th Cir. 1993).

[4] The record indicates that the miner=s most recent coal mine employment occurred in Illinois. Director's Exhibit 2. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Seventh Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

Here, we agree with the Director that a literal interpretation of revised Section 725.503(a) and Section 727.302(e) leads to an absurd result which is also contrary to the purpose of the statutory and regulatory scheme, in that Part 727 claims filed after March 1, 1978 are left without an applicable onset determination rule. As revised, Section 725.503(a) expressly provides that A[e]xcept as provided in paragraph (d) of this section, the date from which benefits are payable for any claim approved under part 727 shall be determined in accordance with '727.302 (see '725.5(d)).@[5] 20 C.F.R. '725.503(a). The closest provision of Section 727.302, which is Section 727.302(e), expressly covers Aclaim[s] reviewed and finally approved under '727.108.@ 20 C.F.R. '727.302(e). Section 727.108 in turn refers to claims filed with the Department of Labor Aunder section 415 or part C of title IV of the act which [are] pending or ha[ve] been denied as of March 1, 1978.@ 20 C.F.R. '727.108. As we have noted, this claim was not filed until April 17, 1978.

Looking to the underlying statute for the onset rule is of no assistance, for Section 6(a) of the Longshore and Harbor Workers= Compensation Act (the Longshore Act), as incorporated by Section 932(a) of the Act, merely provides that benefits be payable Afrom the date of the disability.@ 33 U.S.C. '906(a),as incorporated by 30 U.S.C. '932(a). Here, however, as is often the case in black lung claims, the administrative law judge could not ascertain the date of disability from the medical evidence. Decision and Order on Remand at 5. It was precisely this difficulty in pinpointing the date upon which a miner=s pneumoconiosis progressed to the point of total disability that led the Department of Labor to promulgate the default onset date rule by regulation almost twenty-three years ago. 43 Fed. Reg. 36806, 36828-29 (Aug. 18, 1978).

Since that time, the Department of Labor has consistently required administrative law judges to attempt to determine the month of onset of disability, and if the specific month cannot be identified, to resort to the default entitlement date--the month in which the miner filed his claim--as the date for the commencement of benefits. *See* 20 C.F.R. ''725.503(b), 727.302. Prior to the regulatory revisions, that default rule was applied to ordinary Part 727 claims such as this one via Section 725.503(b)(2000). As the Seventh Circuit court explained in *Zeigler Coal Co. v. Kelley*, 112 F.3d 839, 844, 21 BLR 2-92, 2-102-03 (7th Cir. 1997), a case involving a Part 727 claim, A[w]ith no clearly established onset date, the benefit of the doubt and the concomitant back-dated benefits go to the miner,@ under Section 725.503(b). To conclude that now, no onset rule governs this Part 727 claim would be contrary to the statutory and regulatory scheme.

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[5] Paragraph (d) of revised Section 725.503 provides specific rules for determining the date from which benefits are payable for claims which are awarded on modification pursuant to Section 22 of the Longshore and Harbor Workers= Compensation Act, as implemented by 20 C.F.R. '725.310. 20 C.F.R. '725.503(d).

As the Director further notes, removing a category of Part 727 claims from the coverage of the default onset regulations would run counter to the Department of Labor=s expressed intent in recently amending Section 725.503. In its initial notice of proposed rulemaking, the Department stated that its purpose in amending Section 725.503(a) was merely Ato reduce the number of provisions dealing with part 727 awards,@ by directing that Section 727.302 be applied to Part 727 awards. 62 Fed. Reg. 3337, 3366 (Jan. 22, 1997). The drafters of that section appear to have overlooked the fact that Section 727.302 is silent as to Part 727 claims which are not also Reform Act review claims. Additionally, in the comments later issued with its final rule, the Department explained at length that it was retaining the long-standing, default onset date rule because it considered application of that rule to be the most reasonable way to implement Section 6(a) of the Longshore Act in the context of black lung claims. 65 Fed. Reg. at 80012-13. Thus, as the Director states, it is obvious that Ano change in the [onset] treatment of Part C claims was intended@ in the recent regulatory revisions. Director=s Brief at 3.

Therefore, we defer to the Director=s interpretation of revised Section 725.503(a) and Section 727.302(e) as reasonable and consistent with the Department=s long-standing treatment of onset determinations in black lung claims. *See Taskey, supra*. Consequently, to determine the onset date for Part 727 claims filed after March 1, 1978 Ain accordance with ' 727.302,@ 20 C.F.R. ' 725.503(a), we follow the Director=s suggestion to construe Section 727.302(e) as encompassing Part 727 claims filed after March 1, 1978. Because Section 727.302(e) provides that benefits Abe payable as provided in ' 725.503,@ Section 725.503(b) is the regulation that applies to determine the onset date in this Part 727 claim filed on April 17, 1978. 20 C.F.R. ' ' 727.302(e), 725.503(b). Accordingly, the Board is now able to determine whether the challenged regulations affect the outcome of this case.

Based upon the briefs submitted by the parties, and our review, we hold that the disposition of this case is not impacted by the challenged regulations. The administrative law judge in this case weighed the evidence based in part on the principle that pneumoconiosis is progressive. However, the outcome of the case is the same under both the existing law, recognizing the progressive nature of pneumoconiosis, *see Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151, 11 BLR 2-1, 2-9 (1987), *reh=g denied*, 484 U.S. 1047 (1988); *Amax Coal Co. v. Franklin*, 957 F.2d 355, 359, 16 BLR 2-50, 2-57 (7th Cir. 1992), and 20 C.F.R.

'718.201(c), which codifies existing case law.[6] 65 Fed. Reg. 79937, 79971-72. Further review indicates that the applicable method for determining the onset date for benefits set forth at amended 20 C.F.R. '725.503(b) is the same as that set forth in the former 20 C.F.R. '725.503(b)(2000). Additionally, based on our review, we conclude that none of the other challenged regulations affects the outcome of this case. Therefore, the Board will proceed with the adjudication of this 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 supported by substantial evidence, is rational, and is in accordance with law. 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 first contends that the administrative law judge violated the APA and employer=s due process rights by failing to issue an order on remand notifying the parties that he had resumed jurisdiction and was about to issue a decision. Employer argues that it was prejudiced by the administrative law judge=s failure to issue such an order, because, employer asserts, the law regarding the progressivity of pneumoconiosis changed, which in turn required that employer have the opportunity to present new evidence and additional argument directed at this issue. Employer asserts that the administrative law judge=s failure to announce that he had the case on remand precluded employer from requesting that the record be reopened and that briefs be allowed. Employer=s contention lacks merit.

[6] Although this case is governed by the entitlement criteria of 20 C.F.R. Part 727, which were not altered during the rulemaking proceedings, Section 727.203(c) provides that Athe provisions of Part 718 . . . as amended from time to time, shall also be applicable to the adjudication of claims under this section.@ 20 C.F.R. '727.203(c). The amended definition of pneumoconiosis in 20 C.F.R. '718.201 is intended to implement the statutory definition of pneumoconiosis at 30 U.S.C. '902(b), which is applicable to all claims.

The Board=s September 3, 1999 decision provided employer with notice that the case would be remanded to the administrative law judge.[7] *See* 20 C.F.R. '802.403(b). At that point, the regulations provided a process which employer, represented by experienced black lung counsel, could have utilized. Section 725.459A provides that A[b]riefs or other written statements . . . as to facts or law may be filed by any party with the permission of the administrative law judge.@ 20 C.F.R. '725.459A. Employer had almost five months after the issuance of the Board=s Decision and Order remanding the case within which to request permission from the administrative law judge to file a brief on remand, but the record contains no such request. *See* 29 C.F.R. '18.6 (providing for motions and requests to the administrative law judge). Nor did employer request that the record be reopened. Therefore, we will not address whether due process and the APA impose a duty on the administrative law judge to announce that he has received a remanded case, since in the instant case employer had notice that the case was en route to the administrative law judge for further consideration, and employer chose not to avail itself of the opportunity to file a motion with the administrative law judge. Furthermore, after employer had received the administrative law judge=s decision it could still have requested the administrative law judge to reopen the record in a motion for reconsideration. *See* 20 C.F.R. '725.479(b). Its failure to do so demonstrates the emptiness of its argument that it was unduly prejudiced by the administrative law judge=s decision. Under these circumstances, we find no error in the administrative law judge=s issuance of his Decision and Order without the benefit of briefs on remand.

[7] Moreover, it is the Board=s standard procedure to notify the parties when it transfers a case file to the Office of Administrative Law Judges (OALJ). Employer does not contend that it did not receive notice that the Board transferred the file to the OALJ on November 4, 1999.

Moreover, employer=s assertion that the law had changed since the administrative law judge=s 1998 Decision and Order awarding benefits, thus entitling employer to a reopening of the record on remand, lacks merit. Employer argues that *Peabody Coal Co. v. Spese*, 117 F.3d 1001, 21 BLR 2-113 (7th Cir. 1997)(*en banc*), created a new defense, allowing operators to submit scientific evidence that the disease of simple pneumoconiosis is not progressive. Assuming *arguendo* that *Spese* created new law, *Spese* was decided almost eight months prior to the administrative law judge=s 1998 Decision and Order awarding benefits.[8] Therefore, to the extent the law changed, it changed well before, not after, the administrative law judge=s 1998 Decision and Order. Employer had sufficient time to request that the record be reopened for the submission of scientific evidence that pneumoconiosis is not progressive, but did not do so. Employer thus waived the progressivity argument by failing to make it to the administrative law judge. Therefore, the progressivity argument was unavailable on remand as a basis for reopening the record. Accordingly, we now turn to the administrative law judge=s finding that benefits should commence as of April 1978.

Employer asserts that the provision of 20 C.F.R. '725.305(b), which authorizes an administrative law judge to utilize the filing date of a claim as the presumptive onset date where the medical evidence does not establish the month of onset, violates Section 7(c) of the APA and runs afoul of the United States Supreme Court=s holding in *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 67, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), by shifting the burden of persuasion to employer. Employer=s contention lacks merit. As the Director explains in his response brief, Section 725.503(b) does not shift the burden of establishing the onset date of total disability due to pneumoconiosis from a miner to the party opposing entitlement, but rather adopts a presumptive onset date only where the evidence does not establish the actual date on which the miner became totally disabled due to pneumoconiosis, a presumption which shifts the burden of *production* to the party opposing entitlement. Where the party opposing entitlement submits credible evidence that the miner was not totally disabled due to pneumoconiosis subsequent to the presumptive onset date, then the miner has the burden to prove by a preponderance of the evidence that he was, in fact, totally disabled due to pneumoconiosis during the disputed period. Therefore, because Section 725.503(b) does not shift the burden of persuasion, it does not violate Section 7(c) of the APA or run afoul of *Ondecko*. Accordingly, we reject employer=s contention that Section 725.503(b) is an invalid regulation.

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[8] It is well established that judicial decisions are given retroactive effect, even when they overrule prior law. *See Hughes Aircraft Co. v. United States ex rel. Schumer*, U.S. , , 117 S.Ct. 1871, 1878 (1997). That is because court decisions do not change the law but explain what the statute always meant. *Rivers v. Roadway Express*, 511 U.S. 298, 313 n. 12, 114 S.Ct. 1510, 1519 n. 12 (1994).

Employer next contends that the administrative law judge erred in finding that the medical evidence did not establish the date upon which the miner became totally disabled due to pneumoconiosis. Employer argues that the x-rays demonstrate that pneumoconiosis was not present prior to 1984, and notes that the administrative law judge relied primarily on the more recent x-rays to find the existence of pneumoconiosis established pursuant to 20 C.F.R. ' 727.203(a)(1).

Contrary to employer=s contention, the administrative law judge permissibly declined to find that the early, negative x-ray readings established that pneumoconiosis was absent prior to 1984. In weighing the negative x-ray readings, the administrative law judge properly took into account published authority holding that negative x-rays are not necessarily reliable indicators of the absence of pneumoconiosis. Decision and Order on Remand at 5; *Chastain v. Freeman United Coal Mining Co*., 927 F.2d 969, 970 (7th Cir. 1991), citing *Usery v. Turner-Elkhorn Mining Co*., 428 U.S. 1, 31-34 (1976). Moreover, the administrative law judge correctly weighed the negative x-ray readings in the context of the entire record, which, as the administrative law judge noted, included early, credited, pulmonary function studies and a credited medical opinion tending to indicate that the miner was totally disabled due to pneumoconiosis at least by, and probably before, October 31, 1978. *See Lykins v. Director, OWCP*, 12 BLR 1-181, 1-183 (1989)(the administrative law judge must weigh all evidence relevant to the onset date).

Based upon our review of the record and the administrative law judge=s Decision and Order on Remand, we conclude that the administrative law judge complied with the

Board=s instructions to consider all of the relevant medical evidence pursuant to Section 725.503. We also conclude that the administrative law judge provided rational reasons for finding both that the record did not establish the month of onset of total disability due to pneumoconiosis, and that the record lacked credible evidence proving that the miner was not totally disabled due to pneumoconiosis subsequent to the filing date of his claim. The Board is not empowered to reweigh the evidence or substitute its inferences for those of the administrative law judge. *Mays v. Piney Mountain Coal Co*., 21 BLR 1-59, 1-64 (1997)(Dolder, J., concurring and dissenting). Because the administrative law judge permissibly found that the evidence did not establish the month of onset, he properly ordered that benefits be payable as of April 1978. 20 C.F.R. ' 725.503(b); *see Kelley, supra*.

Accordingly, the administrative law judge=s Decision and Order on Remand--Awarding Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge